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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209–AA04

Standards of Ethical Conduct for Employees of the Executive Branch; Amendments to the Seeking Other Employment Rules

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The U.S. Office of Government Ethics is issuing a final rule amending portions of the Standards of Ethical Conduct for Employees of the Executive Branch regarding seeking other employment. The final rule incorporates past interpretive advice, updates examples, improves clarity, and makes technical corrections. In addition, the final rule implements the statutory notification requirements that apply to individuals required to file public financial disclosure reports under section 101 of the Ethics in Government Act of 1978 when they negotiate for or have an agreement of future employment or compensation.

DATES: This final rule is effective August 25, 2016.

FOR FURTHER INFORMATION CONTACT: Elaine Newton, Associate Counsel, or Rachel Dowell, Assistant Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917; Telephone: (202) 482–9300; TTY: (800) 877–8339; FAX: (202) 482–9237.

SUPPLEMENTARY INFORMATION:

I. Background

On February 17, 2016, the U.S. Office of Government Ethics (OGE) published a proposed rule in the **Federal Register**, 81 FR 8008, Feb. 17, 2016, proposing to amend subpart F of the Standards of Ethical Conduct for Employees of the Executive Branch regarding seeking other employment. These regulations combine the standards imposed by a criminal statute, 18 U.S.C. 208(a), with the standards imposed by Executive Order 12674, as modified by Executive Order 12731. Section 208(a) of Title 18 requires an employee to recuse from participating personally and substantially in any particular matter that, to the employee's knowledge, will have a direct and predictable effect on the financial interests of a person with whom the employee is negotiating or has any arrangement concerning prospective employment. Beyond this statutory requirement, subpart F incorporates the standards imposed by the Executive Order, addressing issues of lack of impartiality that require recusal from any particular matter that affects the financial interests of a prospective employer, even where the employee's actions in seeking employment may fall short of negotiating for employment. The final rule also implements the notification requirements under section 17 of the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act), Public Law 112–105, 126 Stat. 303, 5 U.S.C. app. 101 note, which apply to employees who file public financial disclosure reports.

II. Comments

The proposed rule was published on February 17, 2016. It provided a 60-day comment period, which ended on April 18, 2016. OGE did not receive any comments. The rationale for the proposed rule, which OGE is now adopting as final, is explained in the preamble at: *https://www.gpo.gov/fdsys/pkg/FR-2016-02-17/pdf/2016-03214.pdf.*

OGE has made nine technical changes in the final rule. First, OGE added the phrase "personally and substantially" in several places within the regulation. This phrase is consistent with the statutory language at 18 U.S.C. 208(a) and is parallel to the language that is currently within the regulation. Second, in 5 CFR 2635.602, Example 1 to paragraph (a), OGE removed the phrase "who is not a public filer" to better clarify the example. Third, OGE clarified in 5 CFR 2635.602, Example 2 to paragraph (a) that the employee is not currently participating in any particular matters affecting the University of Maryland. OGE further clarified that, if the employee is assigned to participate in a particular matter affecting the University of Maryland while she is seeking employment with the University, she must take whatever steps are necessary to avoid working on the grant, in accordance with § 2635.604. This revised language corresponds with 5 CFR 2635.602(a) in the proposed rule. Fourth, OGE added the citation for the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, to 5 CFR 2635.602(b)(3). Fifth, OGE replaced the terms "person" and "potential employer" with the term "prospective employer" in 5 CFR 2635.603, Example 4 to paragraph (b) to use consistent defined terms. Sixth, OGE added the following to 5 CFR 2635.603, Example 10 to paragraph (b): Provided she does not receive a response indicating an interest in employment discussions. A letter merely acknowledging receipt of the resume is not an indication of interest in employment discussions. In addition, the clause "with a response indicating an interest in employment discussions" was added to 5 CFR 2635.604(a)(ii). This language parallels the discussion in the definition section of the previous regulation and corresponds with 5 CFR 2635.604, Example 3 to paragraph (a) in the proposed rule. Seventh, OGE made a grammatical correction in 5 CFR 2635.603, Example 2 to paragraph (c), replacing the word "they" with "it." Eighth, OGE clarified in 5 CFR 2635.604, Example 2 to paragraph (b) that the employee is reviewing an application from the same pharmaceutical company, which is seeking FDA approval for a new drug product. This language parallels the discussion in the recusal section of the previous regulation and corresponds with 5 CFR 2635.604(b) in the proposed rule. Finally, OGE replaced the word "should" with the word "must" in 5 CFR 2635.604, Example 2 to paragraph (b): Once the employee makes a response that is not a rejection to the company's communication concerning possible employment, the employee must recuse from further participation in the review of the application. This language corresponds with 5 CFR 2635.604(b) in the proposed rule.

III. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule would not have a significant economic impact on a substantial number of small entities because it primarily affects current Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 5, subchapter II), this final rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking has been designated as a "significant regulatory action" although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Executive Branch standards of ethical conduct, Government employees.

Approved: July 20, 2016.

Walter M. Shaub, Jr.,

Director, Office of Government Ethics.

Accordingly, the Office of Government Ethics is amending 5 CFR part 2635 as set forth below:

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

■ 1. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Subpart F of part 2635 is revised to read as follows:

Subpart F—Seeking Other Employment

Sec.
2635.601 Overview.
2635.602 Applicability and related considerations.
2635.603 Definitions.
2635.604 Recusal while seeking employment.
2635.605 Waiver or authorization permitting participation while seeking employment.
2635.606 Recusal based on an arrangement concerning prospective employment or otherwise after negotiations.
2635.607 Notification requirements for public financial disclosure report filers regarding negotiations for or agreement of future employment or compensation.

Subpart F—Seeking Other Employment

§ 2635.601 Overview.

This subpart contains a recusal requirement that applies to employees when seeking non-Federal employment with persons whose financial interests would be directly and predictably affected by particular matters in which the employees participate personally and substantially. Specifically, it addresses the requirement of 18 U.S.C. 208(a) that an employee not participate personally and substantially in any particular matter that, to the employee's knowledge, will have a direct and predictable effect on the financial interests of a person "with whom the employee is negotiating or has any arrangement concerning prospective employment." *See* § 2635.402 and § 2640.103 of this chapter. Beyond this statutory requirement, this subpart also addresses issues of lack of impartiality that require recusal from particular matters affecting the financial interests of a prospective employer when an employee's actions in seeking employment fall short of actual employment negotiations. In addition, this subpart contains the statutory notification requirements that apply to public filers when they negotiate for or have agreements of future employment or compensation. Specifically, it addresses the requirements of section 17 of the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act), Public Law 112–105, 126 Stat. 303, 5 U.S.C. app. 101 note, that a public filer must submit a written statement identifying the entity involved in the negotiations or agreement within three business days after commencement of such negotiations or agreement and must submit a notification of recusal whenever there is a conflict of interest or an appearance of a conflict of interest.

§ 2635.602 Applicability and related considerations.

(a) *Applicability.* (1) To ensure that an employee does not violate 18 U.S.C. 208(a), section 17 of the STOCK Act, or the principles of ethical conduct contained in § 2635.101(b), an employee who is seeking employment or who has an arrangement concerning prospective employment must comply with the applicable recusal requirements of §§ 2635.604 and 2635.606 if particular matters in which the employee will be participating personally and substantially would, to the employee's knowledge, directly and predictably affect the financial interests of a prospective employer or of a person with whom the employee has an arrangement concerning prospective employment. Compliance with this subpart also will ensure that the employee does not violate subpart D or E of this part. In addition, a public filer who negotiates for or has an agreement of future employment or compensation must comply with the requirements of § 2635.607.

(2) An employee who is seeking employment with a person whose financial interests are not, to the employee's knowledge, affected directly and predictably by particular matters in which the employee participates personally and substantially has no obligation to recuse under this subpart. In addition, nothing in this subpart requires an employee, other than a public filer, to notify anyone that the employee is seeking employment unless a notification is necessary to implement a recusal pursuant to § 2635.604(b). A public filer who negotiates for or has an agreement of future employment or compensation must comply with the notification requirements in § 2635.607. An employee may, however, be subject to other statutes that impose requirements on employment contacts

or discussions, such as 41 U.S.C. 2103, which is applicable to agency officials involved in certain procurement matters. Employees are encouraged to consult with their ethics officials if they have any questions about how this subpart may apply to them. Ethics officials are not obligated by this subpart to inform supervisors that employees are seeking employment.

Example 1 to paragraph (a): Recently, an employee of the Department of Education submitted her resume to the University of Delaware for a job opening that she heard about through a friend. The employee has begun seeking employment. However, because she is not participating in any particular matters affecting the University of Delaware, she is not required to notify anyone that she has begun seeking employment.

Example 2 to paragraph (a): The employee in the preceding example has been approached about an employment opportunity at the University of Maryland. Because the University of Maryland has applied for grants on which she has been assigned to work in the past, she wants to make certain that she does not violate the ethics rules. The employee contacts her ethics official to discuss the matter. The employee informs the ethics official that she is not currently participating in any particular matters affecting the University of Maryland. As a result, the ethics official advises the employee that she will have no notification obligations under this subpart. However, the ethics official cautions the employee that, if the employee is assigned to participate in a particular matter affecting the University of Maryland while she is seeking employment with the University, she must take whatever steps are necessary to avoid working on the grant, in accordance with § 2635.604.

(b) *Related restrictions*—(1) *Outside employment while a Federal employee.* An employee who is contemplating outside employment to be undertaken concurrently with the employee's Federal employment must abide by any limitations applicable to the employee's outside activities under subparts G and H of this part, including any requirements under supplemental agency regulations to obtain prior approval before engaging in outside employment or activities and any prohibitions under supplemental agency regulations related to outside employment or activities. The employee must also comply with any applicable recusal requirement of this subpart, as well as any applicable recusal requirements under subpart D or E of this part as a result of the employee's outside employment activities.

(2) *Post-employment restrictions.* An employee who is contemplating employment to be undertaken following the termination of the employee's Federal employment should consult an agency ethics official to obtain advice regarding any post-employment restrictions that may be applicable. The regulation implementing the Governmentwide post-employment statute, 18 U.S.C. 207, is contained in part 2641 of this chapter. Employees are cautioned that they may be subject to additional statutory prohibitions on post-employment acceptance of compensation from contractors, such as 41 U.S.C. 2104.

(3) *Interview trips and entertainment.* Where a prospective employer who is a prohibited source as defined in § 2635.203(d) offers to reimburse an employee's travel expenses, or provide other reasonable amenities incident to employment discussions, the employee may accept such amenities in accordance with § 2635.204(e)(3). Where a prospective employer is a foreign government or international organization, the employee must also ensure that he or she is in compliance with the Foreign Gifts and Decorations Act, 5 U.S.C. 7342.

§ 2635.603 Definitions.

For purposes of this subpart:

(a) *Employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee.

Example 1 to paragraph (a): An employee of the Bureau of Indian Affairs who has announced her intention to retire is approached by tribal representatives concerning a possible consulting contract with the tribe. The contractual relationship the tribe wishes to negotiate is employment for purposes of this subpart.

Example 2 to paragraph (a): An employee of the Department of Health and Human Services is invited to a meeting with officials of a nonprofit corporation to discuss the possibility of his serving as a member of the corporation's board of directors. Service, with or without compensation, as a member of the board of directors constitutes employment for purposes of this subpart.

Example 3 to paragraph (a): An employee at the Department of Energy volunteers without compensation to serve dinners at a homeless shelter each month. The employee's uncompensated volunteer services in this case are not considered an employment or business relationship for purposes of this subpart.

(b) An employee is *seeking employment* once the employee has begun seeking employment within the meaning of paragraph (b)(1) of this section and until the employee is no longer seeking employment within the meaning of paragraph (b)(2) of this section.

(1) An employee has begun seeking employment if the employee has directly or indirectly:

(i) Engaged in negotiations for employment with any person. For these purposes, as for 18 U.S.C. 208(a) and section 17 of the STOCK Act, the term *negotiations* means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment in a specific position;

(ii) Made an unsolicited communication to any person, or such person's agent or intermediary, regarding possible employment with that person. However, the employee has not begun seeking employment if that communication was for the sole purpose of requesting a job application; or

(iii) Made a response, other than rejection, to an unsolicited communication from any person, or such person's agent or intermediary, regarding possible employment with that person.

(2) An employee is no longer seeking employment when:

(i) The employee or the prospective employer rejects the possibility of employment and all discussions of possible employment have terminated; or

(ii) Two months have transpired after the employee's dispatch of an unsolicited resume or employment proposal, provided the employee has received no indication of interest in employment discussions from the prospective employer.

(3) For purposes of this definition, a response that defers discussions until the foreseeable future does not constitute rejection of an unsolicited employment overture, proposal, or resume nor rejection of a prospective employment possibility.

Example 1 to paragraph (b): A paralegal at the Department of the Army is in his third year of law school. During a discussion with his neighbor, who is a partner in a large law firm in the community, the neighbor invited him to visit her law firm. The paralegal took her up on the offer and met with an associate at the firm. The associate shared with the paralegal her experiences looking for a legal position, discussed what she does in her position at the law firm, and explained why she chose her current law firm. There was no discussion of possible employment with the firm. The Army paralegal is not seeking employment at this time. The purpose of the visit was informational only.

Example 2 to paragraph (b): An employee of the Defense Contract Audit Agency (DCAA) is auditing the overhead accounts of an Army contractor. While at the contractor's headquarters, the head of the contractor's accounting division tells the employee that his division is thinking about hiring another accountant and asks whether the employee might be interested in leaving DCAA. The DCAA employee asks what kind of work would be involved. The DCAA employee has begun seeking employment because he made a response other than a rejection to the communication regarding possible employment with the Army contractor, although he has not yet begun negotiating for employment.

Example 3 to paragraph (b): The DCAA employee and the head of the contractor's accounting division in the previous example have a meeting to discuss the duties of the position that the accounting division would like to fill and the DCAA employee's qualifications for the position. They also discuss ways the DCAA employee could remedy one of the missing qualifications, and the employee indicates a willingness to obtain the proper qualifications. They do not discuss salary. The employee has engaged in negotiations regarding possible employment with the contractor.

Example 4 to paragraph (b): An employee at the Department of Energy (DOE) lists his job duties and employment experience in a profile on an online, business-oriented social networking service. The employee's profile is not targeted at a specific prospective employer. The employee has not begun seeking employment because the posting of a profile or resume is not an unsolicited communication with any prospective employer.

Example 5 to paragraph (b): The DOE employee in the previous example was recently notified that a representative of a university has viewed his profile. The employee still has not begun seeking employment with the university. Subsequently, a representative of the university contacts the employee through the online forum to inquire whether the employee would be interested in working for the university, to which he makes a response other than rejection. At this point, the employee has begun seeking employment with the university until he rejects the possibility of employment and all discussions of possible employment have terminated.

Example 6 to paragraph (b): The DOE employee in the previous two examples receives emails from various companies in response to his online profile. He does not respond. The employee has not begun seeking employment with the companies because he has not made a response.

Example 7 to paragraph (b): An employee of the Centers for Medicare & Medicaid Services (CMS) is complimented on her work by an official of a State Health Department who asks her to call if she is ever interested in leaving Federal service. The employee explains to the State official that she is very happy with her job at CMS and is not interested in another job. She thanks him for his compliment regarding her work and adds that she'll remember his interest if she ever decides to leave the Government. The employee has rejected the unsolicited employment overture and has not begun seeking employment.

Example 8 to paragraph (b): The employee in the preceding example responds by stating that she cannot discuss future employment while she is working on a project affecting the State's health care funding but would like to discuss employment with the State when the project is completed. Because the employee has merely deferred employment discussions until the foreseeable future, she has begun seeking employment with the State Health Department.

Example 9 to paragraph (b): Three months prior to the end of the current administration, a political appointee at a large department receives a telephone call from the managing partner of an international law firm. The managing partner asks if the official would be interested in joining the law firm. The official says, "I am not talking to anyone about employment until I leave the Government." The official has rejected the unsolicited employment overture and has not begun seeking employment.

Example 10 to paragraph (b): A geologist employed by the U.S. Geological Survey sends her resume to an oil company. The geologist has begun seeking employment with that oil company and will be seeking employment for two months from the date the resume was mailed, provided she does not receive a response indicating an interest in employment discussions. A letter merely acknowledging receipt of the resume is not an indication of interest in employment discussions. However, if she withdraws her application or is notified within the two-month period that her resume has been rejected, she will no longer be seeking employment with the oil company as of the date she makes such withdrawal or receives such notification.

(c) *Prospective employer* means any person with whom the employee is seeking employment. Where contacts that constitute seeking employment are made by or with an agent or other intermediary, the term prospective employer means:

(1) A person who uses that agent or other intermediary for the purpose of seeking to establish an employment relationship with the employee if the agent identifies the prospective employer to the employee; and

(2) A person contacted by the employee's agent or other intermediary for the purpose of seeking to establish an employment relationship if the agent identifies the prospective employer to the employee.

Example 1 to paragraph (c): An employee of the Federal Aviation Administration (FAA) has retained an employment search firm to help her find another job. The search firm has just reported to the FAA employee that it has given her resume to and had promising discussions with two airport authorities, which the search firm identifies to the employee. Even though the employee has not personally had employment discussions with either airport authority, each airport authority is her prospective employer. She began seeking employment with each airport authority upon learning its identity and that it has been given her resume.

Example 2 to paragraph (c): An employee pays for an online resume distribution service, which sends her resume to recruiters that specialize in her field. The online service has just notified her that it sent her resume to Software Company A and Software Company B. Even though the employee has not personally had employment discussions with either company, each software company is her prospective employer. She began seeking employment with each company upon learning from the online service that Software Company A and Software Company B had been given her resume by the intermediary.

(d) *Direct and predictable effect, particular matter,* and *personal and substantial* have the respective meanings set forth in § 2635.402(b)(1), (3), and (4).

(e) *Public filer* means a person required to file a public financial disclosure report as set forth in § 2634.202 of this chapter.

§ 2635.604 Recusal while seeking employment.

(a) *Obligation to recuse.* (1) Except as provided in paragraph (a)(2) of this section or where the employee's participation has been authorized in accordance with § 2635.605, the employee may not participate personally and substantially in a particular matter that, to the employee's knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom the employee is seeking employment within the meaning of § 2635.603(b). Recusal is accomplished by not participating in the particular matter.

(2) The employee may participate in a particular matter under paragraph (a)(1) of this section when:

(i) The employee's only communication with the prospective employer in connection with the search for employment is the submission of an unsolicited resume or other employment proposal;

(ii) The prospective employer has not responded to the employee's unsolicited communication with a response indicating an interest in employment discussions; and

(iii) The matter is not a particular matter involving specific parties.

Example 1 to paragraph (a): A scientist is employed by the National Science Foundation (NSF) as a special Government employee to serve on a panel that reviews grant applications to fund research relating to deterioration of the ozone layer. She is discussing possible employment with a university that received an NSF grant several years ago to study the effect of fluorocarbons but has no current grant applications pending before NSF. The employee is seeking employment, but she does not need to recuse because there is no particular matter that would have a direct and predictable effect on the financial interests of the prospective employer. Recusal would be required if the university submits a new application for the panel's review.

Example 2 to paragraph (a): An employee of the Food and Drug Administration is developing a regulation on research criteria for approving prescription drugs. She begins discussing possible employment with a pharmaceutical company. The employee may not participate personally and substantially in the development of the regulation because she has begun employment discussions with the pharmaceutical company and the regulation is a particular matter of general applicability which would have a direct and predictable effect on the financial interests of the pharmaceutical company.

Example 3 to paragraph (a): A special Government employee of the Federal Deposit Insurance Corporation (FDIC) is assigned to advise the FDIC on rules applicable to all member banks. She mails an unsolicited letter to a member bank offering her services as a contract consultant. Although the employee is seeking employment, the employee may participate in this particular matter of general applicability until she receives some response indicating an interest in discussing her employment proposal. A letter merely acknowledging receipt of the proposal is not an indication of interest in employment discussions.

Example 4 to paragraph (a): An employee of the Occupational Safety and Health Administration is conducting an inspection of one of several textile companies to which he sent an unsolicited resume. The employee may not participate personally and substantially in the inspection because he is seeking employment and the inspection is a particular matter involving specific parties that will affect the textile company.

(b) *Notification.* An employee who becomes aware of the need to recuse from participation in a particular matter to which the employee has been assigned must take whatever steps are necessary to ensure that the employee does not participate in the matter. Appropriate oral or written notification of the employee's recusal may be made to an agency ethics official, coworkers, or a supervisor to document and help effectuate the employee's recusal. Public filers must comply with additional notification requirements set forth in § 2635.607.

Example 1 to paragraph (b): An employee of the Department of Veterans Affairs (VA) is participating in the audit of a contract for laboratory support services. Before sending his resume to a lab which is a subcontractor under the VA contract, the employee should recuse from participation in the audit. Since he cannot withdraw from participation in the contract audit without the approval of his supervisor, he should notify his supervisor of his need to recuse for ethics reasons so that appropriate adjustments in his work assignments can be made.

Example 2 to paragraph (b): An employee of the Food and Drug Administration (FDA) is contacted in writing by a pharmaceutical company concerning possible employment with the company. The employee is reviewing an application from the same pharmaceutical company, which is seeking FDA approval for a new drug product. Once the employee makes a response that is not a rejection to the company's communication concerning possible employment, the employee must recuse from further participation in the review of the application. Where he has authority to ask his colleague to assume his reviewing responsibilities, he may accomplish his recusal by transferring the work to the employee designated to cover for him. However, to ensure that his colleague and others with whom he had been working on the review do not seek his advice regarding the review of the application or otherwise involve him in the matter, it may be necessary for him to advise those individuals of his recusal.

(c) *Documentation.* An employee, other than a public filer, need not file a written recusal statement unless the employee is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or a designated agency ethics official, or is specifically directed by an agency ethics official or the person responsible for the employee's assignment to file a written recusal statement. However, it is often prudent for an employee to create a record of his or her actions by providing written notice to an agency ethics official, a supervisor, or other appropriate official. Public filers must comply with the documentation requirements set forth in § 2635.607.

Example 1 to paragraph (c): The General Counsel of a regulatory agency will be engaging in discussions regarding possible employment as corporate counsel of a regulated entity. Matters directly affecting the financial interests of the regulated entity are pending within the Office of General Counsel, but the General Counsel will not be called upon to act in any such matter because signature authority for that particular class of matters has been delegated to an Assistant General Counsel. Because the General Counsel is responsible for assigning work within the Office of General Counsel, he can, in fact, accomplish his recusal by simply avoiding any involvement in matters affecting the regulated entity. However, because it is likely to be assumed by others that the General Counsel is involved in all matters within the cognizance of the Office of General Counsel, he would benefit from filing a written recusal statement with an agency ethics official or the Commissioners of the regulatory agency and providing his subordinates with written notification of his recusal. He may also be specifically directed by an agency ethics official or the Commissioners to file a written recusal statement. If the General Counsel is a public filer, he must comply with the documentation requirements set forth in § 2635.607.

(d) *Agency determination of substantial conflict.* Where the agency determines that the employee's action in seeking employment with a particular person will require the employee's recusal from matters so central or critical to the performance of the employee's official duties that the employee's ability to perform the duties of the employee's position would be materially impaired, the agency may allow the employee to take annual leave or leave without pay while seeking employment, or may take other appropriate action.

§ 2635.605 Waiver or authorization permitting participation while seeking employment.

(a) *Waiver.* Where, as defined in § 2635.603(b)(1)(i), an employee is engaged in employment negotiations for purposes of 18 U.S.C. 208(a), the employee may not participate personally and substantially in a particular matter that, to the employee's knowledge, has a direct and predictable effect on the financial interests of a prospective employer. The employee may participate in such matters only where the employee has received a written waiver issued under the authority of 18 U.S.C. 208(b)(1) or (3). These waivers are described in § 2635.402(d) and part 2640, subpart C of this chapter. For certain employees, a regulatory exemption under the authority of 18 U.S.C. 208(b)(2) may also apply (see part 2640, subpart B of this chapter), including § 2640.203(g) and (i).

Example 1 to paragraph (a): An employee of the Department of Agriculture is negotiating for employment within the meaning of 18 U.S.C. 208(a) and § 2635.603(b)(1)(i) with an orange grower. In the absence of a written waiver issued under 18 U.S.C. 208(b)(1), she may not take official action on a complaint filed by a competitor alleging that the grower has shipped oranges in violation of applicable quotas.

(b) *Authorization by agency designee.* Where an employee is seeking employment within the meaning of § 2635.603(b)(1)(ii) or (iii) and is not negotiating for employment, a reasonable person would be likely to question the employee's impartiality if the employee were to participate personally and substantially in a particular matter that, to the employee's knowledge, has a direct and predictable effect on the financial interests of any such prospective employer. The employee may participate in such matters only where the agency designee has authorized in writing the employee's participation in accordance with the standards set forth in § 2635.502(d).

Example 1 to paragraph (b): Within the past month, an employee of the Department of Education mailed her resume to a university. She is thus seeking employment with the university within the meaning of § 2635.603(b)(1)(ii). In the absence of specific authorization by the agency designee in accordance with § 2635.502(d), she may not participate personally and substantially in an assignment to review a grant application submitted by the university.

§ 2635.606 Recusal based on an arrangement concerning prospective employment or otherwise after negotiations.

(a) *Employment or arrangement concerning employment.* An employee may not participate personally and substantially in a particular matter that, to the employee's knowledge, has a direct and predictable effect on the financial interests of the person by whom he or she is employed or with whom he or she has an arrangement concerning future employment, unless authorized to participate in the matter by a written waiver issued under the authority of 18 U.S.C. 208(b)(1) or (3), or by a regulatory exemption under the authority of 18 U.S.C. 208(b)(2). These waivers and exemptions are described in § 2635.402(d) and part 2640, subparts B and C of this chapter.

Example 1 to paragraph (a): A military officer has accepted a job with a defense contractor that will begin six months after his retirement from military service. During the period that he remains with the Government, the officer may not participate personally and substantially in the administration of a contract with that particular defense contractor unless he has received a written waiver under the authority of 18 U.S.C. 208(b)(1).

Example 2 to paragraph (a): An accountant has just been offered a job with the Office of the Comptroller of the Currency (OCC) which involves a two-year limited appointment. Her private employer, a large corporation, believes the job will enhance her skills and has agreed to give her a two-year unpaid leave of absence at the end of which she has agreed to return to work for the corporation. During the two-year period that she is to be an OCC employee, the accountant will have an arrangement concerning future employment with the corporation that will require her recusal from participation personally and substantially in any particular matter that, to her knowledge, will have a direct and predictable effect on the corporation's financial interests.

(b) *Offer rejected or not made.* The agency designee for the purpose of § 2635.502(c) may, in an appropriate case, determine that an employee not covered by the preceding paragraph who has sought but is no longer seeking employment nevertheless will be subject to a period of recusal upon the conclusion of employment negotiations. Any such determination will be based on a consideration of all the relevant factors, including those listed in § 2635.502(d), and a determination that the concern that a reasonable person may question the integrity of the agency's decision-making process outweighs the Government's interest in the employee's participation in the particular matter.

Example 1 to paragraph (b): An employee of the Securities and Exchange Commission was relieved of responsibility for an investigation of a broker-dealer while seeking employment with the law firm representing the broker-dealer in that matter. The firm did not offer her the partnership position she sought. Even though she is no longer seeking employment with the firm, she may continue to be recused from participating in the investigation based on a determination by the agency designee that the concern that a reasonable person might question whether, in view of the history of the employment negotiations, she could act impartially in the matter outweighs the Government's interest in her participation.

§ 2635.607 Notification requirements for public financial disclosure report filers regarding negotiations for or agreement of future employment or compensation.

(a) *Notification regarding negotiations for or agreement of future employment or compensation.* A public filer who is negotiating for or has an agreement of future employment or compensation with a non-Federal entity must file a statement notifying an agency ethics official of such negotiation or agreement within three business days after commencement of the negotiation or agreement. This notification statement must be in writing, must be signed by the public filer, and must include the name of the non-Federal entity involved in such negotiation or agreement and the date on which the negotiation or agreement commenced. When a public filer has previously complied with the notification requirement in this section regarding the commencement of negotiations, the filer need not file a separate notification statement when an agreement of future employment or compensation is reached with the previously identified non-Federal entity. There is also no requirement to file another notification when negotiations have been unsuccessful. However, employees may want to do so to facilitate the resumption of their duties.

Example 1 to paragraph (a): An employee of the Merit Systems Protection Board who is a public filer was in private practice prior to his Government service. He receives a telephone call from a partner in a law firm who inquires as to whether he would be interested in returning to private practice. During this initial telephone call with the law firm partner, the employee indicates that he is interested in resuming private practice. They discuss generally the types of issues that would need to be agreed upon if the employee were to consider a possible offer to serve as "of counsel" with the firm, such as salary, benefits, and type of work the employee would perform. The employee has begun negotiating for future employment with the law firm. Within three business days after this initial telephone call, he must file written notification of the negotiations with his agency ethics official.

Example 2 to paragraph (a): The employee in the previous example also negotiates a possible contract with a publisher to begin writing a textbook after he leaves Government service. Within three business days after commencing negotiations, the employee must file written notification with his agency ethics official documenting that he is engaged in negotiations for future compensation with the book publisher.

(b) *Notification of recusal.* A public filer who files a notification statement pursuant to paragraph (a) of this section must file with an agency ethics official a notification of recusal whenever there is a conflict of interest or appearance of a conflict of interest with the non-Federal entity identified in the notification statement. The notification statement and the recusal statement may be contained in a single document or in separate documents.

(c) *Advance filing of notification and recusal statements.* When a public filer is seeking employment within the meaning of § 2635.603(b)(1)(ii) or (iii) or is considering seeking employment, the public filer may elect to file the notification statement pursuant to paragraph (a) of this section before negotiations have commenced and before an agreement of future employment or compensation is reached. A public filer may also elect to file the recusal statement pursuant to paragraph (b) of this section before the public filer has a conflict of interest or appearance of a conflict of interest with the non-Federal entity identified in the notification statement. The public filer need not file the document again upon commencing negotiations or reaching an agreement of future employment or compensation. The advance filing of any such document is not construed as a statement that negotiations have or have not commenced or that a conflict of interest does or does not exist. Although the Office of Government Ethics encourages advance filing when a public filer anticipates a realistic possibility of negotiations or an agreement, the failure to make an advance filing does not violate this subpart or the principles of ethical conduct contained in § 2635.101(b).

Example 1 to paragraph (c): An employee of the Federal Labor Relations Authority who is a public filer began negotiating for future employment with a law firm. At the time he began negotiating for future employment with the law firm, he was not participating personally and substantially in a particular matter that, to his knowledge, had a direct and predictable effect on the financial interest of the law firm. Although the employee was not required to file a recusal statement because he did not have a conflict of interest or appearance of a conflict of interest with the law firm identified in the notification statement, the Office of Government Ethics encourages the employee to submit a notification of recusal at the same time that he files the notification statement regarding the negotiations for future employment in order to ensure that the requirement of paragraph (b) of this section is satisfied if a conflict of interest or an appearance of a conflict of interest later arises. The agency ethics official should counsel the employee on applicable requirements but is under no obligation to notify the employee's supervisor that the employee is negotiating for employment.

Example 2 to paragraph (c): An employee of the General Services Administration is contacted by a prospective employer regarding scheduling an interview for the following week to begin discussing the possibility of future employment. The employee discusses the matter with the ethics official and chooses to file a notification and recusal statement prior to the interview. The notification and recusal statement contain the identity of the prospective employer and an estimated date of when the interview will occur. The employee has complied with the notification requirement of section 17 of the STOCK Act.

(d) *Agreement of future employment or compensation* for the purposes of § 2635.607 means any arrangement concerning employment that will commence after the termination of Government service. The term also means any arrangement to compensate in exchange for services that will commence after the termination of Government service. The term includes, among other things, an arrangement to compensate for teaching, speaking, or writing that will commence after the termination of Government service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121, and 129

[Docket No.: FAA–2014–0500; Amdt. Nos. 25–143, 121–375, and 129–52]

RIN 2120–AK30

Fuel Tank Vent Fire Protection; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a final rule published in the **Federal Register** on June 24, 2016 (81 FR 41200). In that final rule, the FAA amended certain airworthiness regulations for transport category airplanes to require fuel tank designs that prevent a fuel tank explosion caused by the propagation of flames, from external fires, through the fuel tank vents. The final rule requires a delay of two minutes and thirty seconds between exposure of external fuel tank vents to ignition sources and explosions caused by propagation of flames into the fuel tank, thus increasing the time available for passenger evacuation and emergency response. The amendments apply to applications for new type certificates and certain applications for amended or supplemental type certificates. The amendments also require certain airplanes produced in the future and operated by air carriers to meet the new standards.

However, in that document, the amendment numbers for the final rules were incorrect, and an airplane model number in a footnote was incorrect. This document now posts the correct amendment numbers and airplane model number in the footnote.

DATES: This correction is effective on July 26, 2016.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Mike Dostert, Propulsion and Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1601 Lind Ave. SW., Renton, WA 98057–3356; telephone (425) 227–2132; facsimile (425) 227 1149; email *Mike.Dostert@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2016, the FAA published a final rule titled, "Fuel Tank Vent Fire Protection" in the **Federal Register** (81 FR 41200).

The intent of that rule is to prevent fuel tank explosions caused by ignition from external ignition sources of fuel vapor either contained in vapor spaces[1] or exiting from vapor spaces through the fuel tank vent outlets. Potential external ignition sources include, but are not limited to, ground handling equipment, fuel fires that result from refueling spills, or ground fires that follow a survivable crash landing in which the fuel tank and the vent system remain intact. Means to prevent or delay the propagation of flame[2] from external sources into the fuel tank through the fuel tank vent system[3] would also prevent or delay fuel tank explosions following certain accidents. These means include flame arrestors or fuel tank inerting. This prevention or delay would provide additional time for the safe evacuation of passengers from the airplane and for emergency personnel to provide assistance.

The rule applies to applications for new type certificates and applications for amended or supplemental type certificates on significant product-level change projects in which title 14, Code of Federal Regulations (14 CFR) 25.975, "Fuel tank vents and carburetor vapor vents," is applicable to a changed area. Additionally, a new operating requirement in both 14 CFR part 121, "Operating Requirements: Domestic, Flag, and Supplemental Operations," and 14 CFR part 129, "Operations: Foreign Air Carriers and Foreign Operators of U.S.-Registered Aircraft Engaged in Common Carriage," applies to airplanes that are issued an original airworthiness certificate after a specified date.

However, the rule published with incorrect amendment numbers, "25–142, 21–376, and 129–53." Amendment number 25–142 is the same amendment number as the rule titled "Harmonization of Airworthiness Standards—Fire Extinguishers and Class B and F Cargo Compartments," which published in the **Federal Register** on February 16, 2016 (81 FR 7698). Amendment numbers 21–376 and 129–53 are incorrect designations. The correct amendment numbers for this rule are "25–143, 121–375, and 129–52."

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[1] A vapor space is any portion of the airplane fuel tanks and the fuel tank vent system that, if such tanks and system held any fuel, could contain fuel vapor.

[2] Flame propagation is the spread of a flame in a combustible environment outward from the point at which the combustion started.

[3] A fuel tank vent system is a system that ventilates fuel vapor from the airplane fuel tanks to the atmosphere. A fuel tank vent system ensures that the air and fuel pressure within the fuel tank stay within structural limits required by § 25.975(a).

In the same publication on page 41203 in footnote number 14, the Lockheed airplane model number referenced is "328." The correct number should be "382."

Correction

In FR Doc. 2016–14454, beginning on page 41200 in the **Federal Register** of June 24, 2016, make the following corrections:

Correction

1. On page 41200, in the second column, correct the 4th header paragraph to read as follows:

"[Docket No.: FAA–2014–0500; Amdt. Nos. 25–143, 121–375, and 129–52]."

2. On page 41203, in the second column, correct the text of footnote number 14 to read as follows:

"The previously approved Lockheed 382 and Embraer flame arrestors would not have met the 2 minute and 30 second requirement."

Issued under authority provided by 49 U.S.C. 106(f) and 44701(a) in Washington, DC, on July 19, 2016.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2016–17590 Filed 7–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, 129, and 135

[Docket No. FAA–2011–1082]

Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final policy statement.

SUMMARY: This action sets forth the Very High Frequency (VHF) Omnidirectional Range (VOR) Minimum Operational Network (MON) policy as proposed in the Proposed Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) notice of proposed policy published on December 15, 2011 (76 FR 77939). This document provides the discontinuance selection criteria and candidate list of VOR Navigational Aids (NAVAIDs) targeted for discontinuance as part of the VOR MON Implementation Program and United States (U.S.) National Airspace System (NAS) Efficient Streamline Services Initiative. Additionally, this policy addresses the regulatory processes the FAA plans to follow to discontinue VORs.

DATES: Effective July 26, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Leonixa Salcedo, VOR MON Program Manager, AJM–324, Navigation Programs, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email: *vormon@faa.gov;* telephone: (844) 4VORMON (844–486–7666).

SUPPLEMENTARY INFORMATION:

Background

On December 15, 2011 the FAA published in the **Federal Register** a notice of proposed policy and request for comments (76 FR 77939) on the FAA's proposed strategy for gradually reducing the current VOR network to a Minimum Operational Network (MON) as the NAS transitions to performance-based navigation (PBN) as part of the Next Generation Air Transportation System (NextGen). The FAA announced that, as part of a NAS Efficient Streamlined Services Initiative, the number of conventional NAVAIDs would be reduced while more efficient Area Navigation (RNAV) routes and procedures are implemented throughout the NAS. The FAA noted its intention to convene a working group to assist in developing a candidate list of VORs for discontinuance using relevant operational, safety, cost, and economic criteria. Interested parties were invited to participate in the review of this policy and planning effort by submitting written comments on the proposal.

The FAA reviewed all 330 comments received and on August 21, 2012, published in the **Federal Register** the disposition of the comments on the notice of proposed policy (77 FR 50420). In considering and disposing of the comments, the FAA noted that it would develop an initial VOR MON Plan which would be made publicly available. The FAA renewed its intention to convene a working group that would assist in developing objective criteria which would be applied consistently nationally and regionally to help identify those VOR facilities that would remain operational.

Criteria for Assessing VOR Discontinuance

After the FAA published the disposition of comments, stakeholders, industry, and military services provided further inputs to the FAA for consideration in developing the criteria used to select VORs that would need to be retained as a part of the MON. The FAA also sought recommendations from aviation industry stakeholders through the RTCA Tactical Operations Committee (TOC). With this collective input, the FAA developed the criteria to determine which VORs would be candidates for retention. VORs not meeting these criteria were considered as discontinuance candidates.

The following criteria were used by the FAA to determine which VORs would be retained as a part of the MON:

- Retain VORs to perform Instrument Landing System (ILS), Localizer (LOC), or VOR approaches supporting MON airports at suitable destinations within 100 NM of any location within the CONUS. Selected approaches would not require Automatic Direction Finder (ADF), Distance Measuring Equipment (DME), Radar, or GPS.
- Retain VORs to support international oceanic arrival routes.
- Retain VORs to provide coverage at and above 5,000 ft AGL.
- Retain most VORs in the Western U.S. Mountainous Area (WUSMA), specifically those anchoring Victor airways through high elevation terrain.
- Retain VORs required for military use.
- VORs outside of the CONUS were not considered for discontinuance under the VOR MON Implementation Program.

The following considerations were used to supplement the VOR MON criteria above:

- Only FAA owned/operated VORs were considered for discontinuance.
- Co-located DME and Tactical Air Navigation (TACAN) systems will generally be retained when the VOR service is terminated.
- Co-located communication services relocated or reconfigured to continue transmitting their services.

Working Group

Using the established criteria, the FAA convened an internal working group to develop a candidate list of VORs using the VOR MON criteria relevant to operational, safety, cost, and economic considerations. The group developed the VOR MON service by first selecting MON airports that met the criteria listed above. Airports with ILS approaches that met the criteria were selected in preference to VOR approaches. If two airports in close proximity had suitable approaches, then the airport whose ILS or VOR approach required the FAA to retain the fewest number of VORs (*i.e.,* to identify initial, final, stepdown, and missed approach points) were generally selected. VORs necessary to fulfil other criteria were then selected to be retained. Additional VORs were retained to provide coverage at 5000 ft AGL. The effect of terrain blockage and unavailable radials from some VORs was considered, as was MON airport infrastructure, radar coverage, and training. The overall goal of the effort was to provide the VOR MON service according to the criteria while retaining the fewest number of VORs.

The working group also considered flight procedure development requirements and capabilities, non-rulemaking and rulemaking processing requirements and timelines, and geographic impacts to the NAS as it refined the candidate list of VORs for retention. Since some VORs are co-located with communications services, such as the Hazardous Inflight Weather Advisory Service (HIWAS) and Remote Communication Outlet (RCO), the working group also identified which services would be reconfigured or relocated in order to continue to provide those services. For VORs not listed as part of the MON, the FAA's working groups developed a candidate list of VORs for discontinuance arranged in two Phases (2016–2020 and 2021–2025) by Service Area based on Instrument Flight Procedure (IFP) mitigation complexity.

Discontinuance Process

The FAA will follow its established policies and processes for VOR discontinuance according to FAA Order JO 7400.2, *Procedures for Handling Airspace Matters.* Prior to making any VOR discontinuance determinations, the geographically responsible Air Traffic Organization (ATO) service area office will publish a circular notice of the proposed discontinuance action to solicit comments from aviation interested persons and organizations. A brief description of the discontinuance effect on airspace and instrument procedures will be included in the circularization. Once a determination to discontinue a VOR has been made, the responsible service area office will initiate established part 71 and part 97 rulemaking processing procedures. The FAA will publish Notices of Proposed Rulemaking (NPRM) in the **Federal Register** to solicit public comments on all proposed part 71 airspace and ATS route amendments resulting from VOR discontinuance determinations prior to taking any amendment actions within the NAS. After consideration of all public comments received in response to published NPRMs, the FAA will determine whether to issue final rules announcing part 71 airspace and Air Traffic Service (ATS) route and part 97 standard instrument procedure amendment determinations in the **Federal Register**.

The FAA remains committed to the plan to retain an optimized network of VOR NAVAIDs. The MON will enable pilots to revert from Performance Based Navigation (PBN) to conventional navigation for approach, terminal and en route operations in the event of a GPS outage and supports the NAS transition from VOR-based routes to a more efficient PBN structure consistent with NextGen goals and the NAS Efficient Streamlined Services Initiative.

The FAA continues to plan the NAS transition from defining ATS routes and instrument procedures using VORs and other conventional NAVAIDs[1] to a point-to-point system based on RNAV and Required Navigation Performance (RNP). RNAV will generally be available throughout the NAS and RNP will be provided where beneficial. The FAA's network of DME NAVAIDs will provide a PBN-capable backup to GPS; however, for aircraft without scanning DME receivers (DD) or DD with Inertial Reference Unit aiding (DDI) equipment, the FAA will provide a conventional navigation backup service based on the proposed VOR MON. The VOR MON is designed to enable aircraft, having lost Global Navigation Satellite System (GNSS) service, to revert to conventional navigation procedures. The VOR MON is further designed to allow aircraft to proceed to a MON airport where an ILS or VOR approach procedure can be flown without the necessity of GPS, DME, ADF, or Surveillance. Of course, any airport with a suitable instrument approach may be used for landing, but the VOR MON assures that at least one airport will be within 100 NM.

Discontinuance Candidate List

Provided below is a candidate list of VORs being considered for discontinuance in Phase 1 (2016–2020) and Phase 2 (2021–2025) as the FAA works toward the establishment of a VOR MON. It is tentative and may be adjusted based on economic or other factors. As of June 21, 2016 the 45 facilities denoted with an asterisk (*) have completed the circularization public notice process and the FAA has made its determination for discontinuance:

VOR MON Program—Phase 1 Candidate Discontinuance List (FY2016–FY2020)

ID	VOR Name	City	ST
Western Service Area (WSA) Phase 1 Discontinuance Total: 10			
BSR	BIG SUR	BIG SUR	CA
CCR	CONCORD	CONCORD	CA
CIC	CHICO	CHICO	CA
CZQ	CLOVIS	FRESNO	CA
ECA*	MANTECA	STOCKTON	CA
HYP	EL NIDO	MERCED	CA
LIA	LIBERATOR	MOUNTAIN HOME	ID
MXW*	MAXWELL	MAXWELL	CA
PVU	PROVO	PROVO	UT
ROM	PRIEST	PRIEST	CA
Central Service Area (CSA) Phase 1 Discontinuance Total: 31			
ANY	ANTHONY	ANTHONY	KS
AOH*	ALLEN COUNTY	LIMA	OH
ASP	AU SABLE	OSCODA	MI

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[1] Includes Tactical Air Navigation (TACAN), VOR/TACAN (VORTAC), VOR/DME, and Non-Directional Beacon (NDB) operated by the FAA.

VOR MON PROGRAM—PHASE 1 CANDIDATE DISCONTINUANCE LIST (FY2016–FY2020)—Continued

ID	VOR Name	City	ST
BDE	BAUDETTE	BAUDETTE	MN
BRD *	BRAINERD	BRAINERD	MN
BTL *	BATTLE CREEK	BATTLE CREEK	MI
BUA *	BUFFALO	BUFFALO	SD
BUU	BURBUN	BURLINGTON	WI
BWS	BOLES	BOLES	NM
CGI	CAPE GIRARDEAU	CAPE GIRARDEAU	MO
CSX	CARDINAL	CARDINAL	MO
DAK	DRAKE	FAYETTEVILLE	AR
DDD	PORT CITY	MUSCATINE	IA
DUC	DUNCAN	DUNCAN	OK
ENW	KENOSHA	KENOSHA	WI
FLP	FLIPPIN	FLIPPIN	AR
GBG	GALESBURG	GALESBURG	IL
GTH	GUTHRIE	GUTHRIE	TX
HRK	HORLICK	RACINE	WI
HUB *	HOBBY	HOBBY	TX
HUW	HUTTON	WEST PLAINS	MO
IJX	JACKSONVILLE	JACKSONVILLE	IL
IKK	KANKAKEE	KANKAKEE	IL
LAN	LANSING	LANSING	MI
LJT	TIMMERMAN	MILWAUKEE	WI
LWV	LAWRENCEVILLE	LAWRENCEVILLE	IL
MTO	MATTOON	MATTOON/CHARLESTON	IL
PSI	PONTIAC	WHITE LAKE	MI
RIS *	RIVERSIDE	KANSAS CITY	MO
STE *	STEVENS POINT	STEVENS POINT	WI
SYO *	SAYRE	SAYRE	OK
Eastern Service Area (ESA) Phase 1 Discontinuance Total: 33			
ABB *	NABB	NABB	IN
AOO	ALTOONA	ALTOONA	PA
BML	BERLIN	BERLIN	NH
BQM	BOWMAN	LOUISVILLE	KY
CCT	CENTRAL CITY	CENTRAL CITY	KY
CYY	CYPRESS	NAPLES	FL
DAN	DANVILLE	DANVILLE	VA
DKK *	DUNKIRK	DUNKIRK	NY
DYR *	DYERSBURG	DYERSBURG	TN
EDS *	ORANGEBURG	ORANGEBURG	SC
ELZ *	WELLSVILLE	WELLSVILLE	NY
EWA *	KEWANEE	KEWANEE	MS
FKN *	FRANKLIN	FRANKLIN	VA
GFL *	GLENS FALLS	GLENS FALLS	NY
GRV *	GRANTSVILLE	GRANTSVILLE	MD
HAB	HAMILTON	HAMILTON	AL
HLL	HANDLE	PANAMA CITY	FL
HUL	HOULTON	HOULTON	ME
HVN	NEW HAVEN	NEW HAVEN	CT
HZL *	HAZLETON	HAZLETON	PA
ITH	ITHACA	ITHACA	NY
JKS *	JACKS CREEK	JACKS CREEK	TN
LVL *	LAWRENCEVILLE	HERNDON	VA
MMJ	MONTOUR	PITTSBURGH	PA
OTT *	NOTTINGHAM	NOTTINGHAM	MD
PLB *	PLATTSBURGH	PLATTSBURGH	NY
PNE	NORTH PHILADELPHIA	NORTH PHILADELPHIA	PA
PNN *	PRINCETON	PRINCETON	ME
PXT *	PATUXENT	PATUXENT RIVER	MD
RNL *	RAINELLE	RAINELLE	WV
RUT	RUTLAND	RUTLAND	VT
SLK	SARANAC LAKE	SARANAC LAKE	NY
TDG *	TALLADEGA	TALLADEGA	AL

VOR MON PROGRAM—PHASE 2 CANDIDATE DISCONTINUANCE LIST (FY2021–FY2025)

ID	VOR Name	City	ST
Western Service Area (WSA) Phase 2 Discontinuance Total: 5			
COE	COEUR D'ALENE	COEUR D'ALENE	ID

VOR MON PROGRAM—PHASE 2 CANDIDATE DISCONTINUANCE LIST (FY2021–FY2025)—Continued

ID	VOR Name	City	ST
DEN	DENVER	DENVER	CO
HUH	WHATCOM	BELLINGHAM	WA
PAE	PAINE	EVERETT	WA
STS	SANTA ROSA	SANTA ROSA	CA
Central Service Area (CSA) Phase 2 Discontinuance Total: 131			
ATY	WATERTOWN	WATERTOWN	SD
AUW	WAUSAU	WAUSAU	WI
AZO	KALAMAZOO	KALAMAZOO	MI
BDF	BRADFORD	BRADFORD	IL
BGD	BORGER	BORGER	TX
BMI	BLOOMINGTON	BLOOMINGTON	IL
BPT	BEAUMONT	BEAUMONT PORT ARTHUR	TX
BRO	BROWNSVILLE	BROWNSVILLE	TX
BVT	BOILER	LAFAYETTE	IN
CLL	COLLEGE STATION	COLLEGE STATION	TX
CNU	CHANUTE	CHANUTE	KS
CQY	CEDAR CREEK	CEDAR CREEK	TX
CTW	NEWCOMERSTOWN	NEWCOMERSTOWN	OH
CXR	CHARDON	CHARDON	OH
DAS	DAISETTA	DAISETTA	TX
DNV	DANVILLE	DANVILLE	IL
DVL	DEVILS LAKE	DEVILS LAKE	ND
DWN	DARWIN	DARWIN	MN
DXO	DETROIT	DETROIT	MI
EIC	BELCHER	SHREVEPORT	LA
ELA	EAGLE LAKE	EAGLE LAKE	TX
ELO	ELY	ELY	MN
ELX	KEELER	KEELER	MI
EON	PEOTONE	PEOTONE	IL
EOS	NEOSHO	NEOSHO	MO
FAH	FALLS	SHEBOYGAN	WI
FBC	FLAG CITY	FINDLAY	OH
FCM	FLYING CLOUD	MINNEAPOLIS	MN
FOD	FORT DODGE	FORT DODGE	IA
FRM	FAIRMONT	FAIRMONT	MN
GIJ	GIPPER	NILES	MI
GLD	GOODLAND	GOODLAND	KS
GLR	GAYLORD	GAYLORD	MI
GNL	GROESBECK	MEXIA	TX
GNP	GLENPOOL	GLENPOOL	OK
GPZ	GRAND RAPIDS	GRAND RAPIDS	MN
GQE	GILMORE	GILMORE	AR
GSH	GOSHEN	GOSHEN	IN
HIC	WHITE CLOUD	WHITE CLOUD	MI
HML	HUMBOLDT	HUMBOLDT	MN
HON	HURON	HURON	SD
HSI	HASTINGS	HASTINGS	NE
HYR	HAYWARD	HAYWARD	WI
HYS	HAYS	HAYS	KS
ICT	WICHITA	WICHITA	KS
IDU	INDUSTRY	INDUSTRY	TX
IFI	KINGFISHER	KINGFISHER	OK
IMT	IRON MOUNTAIN	IRON MOUNTAIN KINGSFORD	MI
IRK	KIRKSVILLE	KIRKSVILLE	MO
ISD	WINNER	WINNER	SD
ISQ	SCHOOLCRAFT COUNTY	MANISTIQUE	MI
JEN	GLEN ROSE	GLEN ROSE	TX
JFN	JEFFERSON	JEFFERSON	OH
JVL	JANESVILLE	JANESVILLE	WI
JWJ	ELMWOOD	MARSHALLTOWN	IA
JXN	JACKSON	JACKSON	MI
LBL	LIBERAL	LIBERAL	KS
LFD	LITCHFIELD	LITCHFIELD	MI
LFT	LAFAYETTE	LAFAYETTE	LA
LLO	LLANO	LLANO	TX
LNR	LONE ROCK	LONE ROCK	WI
LOA	LEONA	LEONA	TX
LSE	LA CROSSE	LA CROSSE	WI
MAP	MAPLES	MAPLES	MO
MAW	MALDEN	MALDEN	MO

VOR MON PROGRAM—PHASE 2 CANDIDATE DISCONTINUANCE LIST (FY2021–FY2025)—Continued

ID	VOR Name	City	ST
MBL	MANISTEE	MANISTEE	MI
MCM	MACON	MACON	MO
MFD	MANSFIELD	MANSFIELD	OH
MFE	MC ALLEN	MC ALLEN	TX
MIE	MUNCIE	MUNCIE	IN
MKG	MUSKEGON	MUSKEGON	MI
MKT	MANKATO	MANKATO	MN
MLC	MC ALESTER	MC ALESTER	OK
MNM	MENOMINEE	MENOMINEE	MI
MON	MONTICELLO	MONTICELLO	AR
MOP	MOUNT PLEASANT	MOUNT PLEASANT	MI
MSP	MINNEAPOLIS	MINNEAPOLIS	MN
MTW	MANITOWOC	MANITOWOC	WI
MWA	MARION	MARION	IL
MZV	MOLINE	MOLINE	IL
MZZ	MARION	MARION	IN
OBH	WOLBACH	WOLBACH	NE
ODI	NODINE	NODINE	MN
OKK	KOKOMO	KOKOMO	IN
OLK	WEBSTER LAKE	WOLF LAKE	IN
ONL	O'NEILL	O'NEILL	NE
OOM	HOOSIER	BLOOMINGTON	IN
ORD*	CHICAGO O'HARE	CHICAGO O'HARE	IL
OSW	OSWEGO	OSWEGO	KS
OTG	WORTHINGTON	WORTHINGTON	MN
OTM	OTTUMWA	OTTUMWA	IA
OXI	KNOX	KNOX	IN
PKD	PARK RAPIDS	PARK RAPIDS	MN
PLL	POLO	POLO	IL
PLN	PELLSTON	PELLSTON	MI
PMM	PULLMAN	PULLMAN	MI
PNT	PONTIAC	PONTIAC	IL
PRX	PARIS	PARIS	TX
PWE	PAWNEE CITY	PAWNEE CITY	NE
RBA	ROBINSON	ROBINSON	KS
RBS	ROBERTS	ROBERTS	IL
RFD	ROCKFORD	ROCKFORD	IL
RID	RICHMOND	RICHMOND	IN
ROD	ROSEWOOD	ROSEWOOD	OH
ROX	ROSEAU	ROSEAU	MN
RQR	RESERVE	RESERVE	LA
RST	ROCHESTER	ROCHESTER	MN
RZN	SIREN	SIREN	WI
SAM	SAMSVILLE	SAMSVILLE	IL
SGH	SPRINGFIELD	SPRINGFIELD	OH
SLR	SULPHUR SPRINGS	SULPHER SPRINGS	TX
STL	CARDINAL	ST LOUIS	MO
SUX	SIOUX CITY	SIOUX CITY	IA
SVM	SALEM	SALEM	MI
SWB	SAWMILL	WINNFIELD	LA
THX	THREE RIVERS	THREE RIVERS	TX
TKO	MANKATO	MANKATO	KS
TNU	NEWTON	NEWTON	IA
TPL	TEMPLE	TEMPLE	TX
TTH	TERRE HAUTE	TERRE HAUTE	IN
TVT	TIVERTON	TIVERTON	OH
UIN	QUINCY	QUINCY	IL
UKN	WAUKON	WAUKON	IA
UKW	BOWIE	BOWIE	TX
URH	TEXOMA	DURANT	OK
VLA	VANDALIA	VANDALIA	IL
VNN	MOUNT VERNON	MOUNT VERNON	IL
VWV	WATERVILLE	WATERVILLE	OH
YKN	YANKTON	YANKTON	SD
YNG	YOUNGSTOWN	YOUNGSTOWN/WARREN	OH
ZZV	ZANESVILLE	ZANESVILLE	OH
Eastern Service Area (ESA) Phase 2 Discontinuance Total: 98			
AGC	ALLEGHENY	PITTSBURGH	PA
AMG	ALMA	ALMA	GA
AML	ARMEL	ARMEL	VA

VOR MON PROGRAM—PHASE 2 CANDIDATE DISCONTINUANCE LIST (FY2021–FY2025)—Continued

ID	VOR Name	City	ST
AZQ	HAZARD	HAZARD	KY
BDR	BRIDGEPORT	BRIDGEPORT	CT
BFD	BRADFORD	BRADFORD	PA
BKW	BECKLEY	BECKLEY	WV
BUF	BUFFALO	BUFFALO	NY
BWG *	BOWLING GREEN	BOWLING GREEN	KY
BWZ	BROADWAY	SCHOOLEY'S MOUNTAIN	NJ
CCV	CAPE CHARLES	CAPE CHARLES	VA
CIP	CLARION	CLARION	PA
CKB *	CLARKSBURG	CLARKSBURG	WV
CLT	CHARLOTTE	CHARLOTTE	NC
CMK	CARMEL	CARMEL	NY
COL	COLTS NECK	COLTS NECK	NJ
CRI	CANARSIE	CANARSIE	NY
CSG	COLUMBUS	COLUMBUS	GA
CSN	CASANOVA	CASANOVA	VA
CTY	CROSS CITY	CROSS CITY	FL
CVG	CINCINNATI	COVINGTON	KY
CVI	COFIELD	COFIELD	NC
DCA	WASHINGTON	WASHINGTON	DC
DCU *	DECATUR	DECATUR	AL
DNY	DELANCEY	DELANCEY	NY
ECB *	NEWCOMBE	NEWCOMBE	KY
EEN	KEENE	KEENE	NH
ELW	ELECTRIC CITY	ANDERSON	SC
ERI	ERIE	ERIE	PA
ESL	KESSEL	KESSEL	WV
ETG	KEATING	KEATING	PA
EUF *	EUFAULA	EUFAULA	AL
EWO	NEW HOPE	NEW HOPE	KY
FJC	ALLENTOWN	ALLENTOWN	PA
FLM	FALMOUTH	FALMOUTH	KY
FLO	FLORENCE	FLORENCE	SC
FQM	WILLIAMSPORT	WILLIAMSPORT	PA
GCV *	GREENE COUNTY	LEAKSVILLE	MS
GGT	GEORGETOWN	GEORGETOWN	NY
GHM *	GRAHAM	CENTERVILLE	TN
GNV *	GATORS	GAINESVILLE	FL
GQO	CHOO CHOO	CHATTANOOGA	TN
GRD	GREENWOOD	GREENWOOD	SC
HEZ	NATCHEZ	NATCHEZ	MS
HLI	HOLLY SPRINGS	HOLLY SPRINGS	MS
HMV	HOLSTON MOUNTAIN	HOLSTON MOUNTAIN	TN
HNK	HANCOCK	HANCOCK	NY
HNN *	HENDERSON	HENDERSON	WV
HRS *	HARRIS	HARRIS	GA
HTO	HAMPTON	EAST HAMPTON	NY
HUO	HUGUENOT	HUGUENOT	NY
IHD *	INDIAN HEAD	SEVEN SPRINGS	PA
LBV	LA BELLE	LA BELLE	FL
LDN	LINDEN	LINDEN	VA
LEB	LEBANON	LEBANON	NH
LGA	LA GUARDIA	NEW YORK	NY
LVZ	WILKES–BARRE	WILKES–BARRE	PA
LWB	GREENBRIER	LEWISBURG	WV
LWM	LAWRENCE	LAWRENCE	MA
LYH	LYNCHBURG	LYNCHBURG	VA
MCN	MACON	MACON	GA
MEM	MEMPHIS	MEMPHIS	TN
MHT	MANCHESTER	MANCHESTER	NH
MIP	MILTON	MILTON	PA
MSL	MUSCLE SHOALS	MUSCLE SHOALS	AL
MSS	MASSENA	MASSENA	NY
MXE	MODINA	MODINA	PA
MYS *	MYSTIC	MYSTIC	KY
ODF	FOOTHILLS	TOCCOA	SC
ODR	WOODRUM	WOODRUM	VA
OOD	WOODSTOWN	WOODSTOWN	NJ
ORW *	NORWICH	NORWICH	CT
PDK	PEACHTREE	ATLANTA	GA
PHK	PAHOKEE	PAHOKEE	FL
PSK	PULASKI	DUBLIN	VA

VOR MON PROGRAM—PHASE 2 CANDIDATE DISCONTINUANCE LIST (FY2021–FY2025)—Continued

ID	VOR Name	City	ST
PSM	PEASE	PORTSMOUTH	NH
PTW	POTTSTOWN	POTTSTOWN	PA
PUT	PUTNAM	PUTNAM	CT
PWL	PAWLING	POUGHKEEPSIE	NY
REC	REVLOC	REVLOC	PA
RKA	ROCKDALE	ROCKDALE	NY
ROA*	ROANOKE	ROANOKE	VA
SBY	SALISBURY	SALISBURY	MD
SFK	STONYFORK	STONYFORK	PA
SLT	SLATE RUN	SLATE RUN	PA
STW	STILLWATER	STILLWATER	NJ
SUG	SUGARLOAF MOUNTAIN	ASHEVILLE	NC
SWL	SNOW HILL	SNOW HILL	MD
TAY*	TAYLOR	TAYLOR	FL
TDT	TIDIOUTE	TIDIOUTE	PA
TEB	TETERBORO	TETERBORO	NJ
TGE*	TUSKEGEE	TUSKEGEE	AL
THS	ST THOMAS	ST THOMAS	PA
TRV	TREASURE	VERO BEACH	FL
UCA	UTICA	UTICA	NY
ULW	ELMIRA	ELMIRA	NY
VAN	VANCE	VANCE	SC
YRK	YORK	YORK	KY

Issued in Washington, DC, on July 19, 2016.

Leonixa Salcedo,

VOR MON Program Manager, AJM–324.

[FR Doc. 2016–17579 Filed 7–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1290–AA31

Department of Labor Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments; Correction

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Interim final rule; correction.

SUMMARY: The U.S. Department of Labor (DOL) is correcting an interim final rule published in the **Federal Register** on July 1, 2016 (81 FR 43430). The interim final rule adjusts the amounts of civil penalties assessed or enforced in its regulations pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. That document inadvertently provided an incorrect authority citation when revising the general authority section for 20 CFR part 655. This document corrects the interim final rule by revising the appropriate authority section.

DATES: *Effective Date:* August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Pamela Peters, Program Analyst, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–5959 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: DOL published a document in the **Federal Register** on July 1, 2016 (81 FR 43430), which made inadvertent revisions to the authority citation for part 655.

In FR Doc. 2016–15378, published on July 1, 2016, (81 FR 43430), make the following correction:

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES [Corrected]

■ 1. On page 43448, in the second and third columns, in part 655—Temporary Employment of Foreign Workers in the United States, the general authority citation is corrected to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); and 8 CFR 214.2(h)(6)(iii).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

Signed at Washington, DC this 20th day of July, 2016.

Thomas E. Perez,

Secretary, U.S. Department of Labor.

[FR Doc. 2016–17552 Filed 7–25–16; 8:45 am]

BILLING CODE 4510–HL–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, and 558

[Docket No. FDA–2014–N–0002]

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 57 approved new animal drug applications (NADAs) and 14 approved abbreviated new animal drug applications (ANADAs) from Elanco Animal Health, A Division of Eli Lilly & Co. to Elanco US, Inc.

DATES: This rule is effective July 26, 2016.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–0571, *steven.vaughn@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285 has informed FDA that it has transferred ownership of, and all rights and interest in, the 71 approved NADAs and ANADAs in table 1 to Elanco US, Inc., 2500 Innovation Way, Greenfield, IN 46140.

TABLE 1—NADAS AND ANADAS TRANSFERRED FROM ELANCO ANIMAL HEALTH, A DIVISION OF ELI LILLY & CO. TO ELANCO US, INC.

File No.	Product name	21 CFR Section
010–918	HYGROMIX 8 (hygromycin B) Type A medicated article	558.274
011–948	HYGROMIX 2.4 (hygromycin B) Type A medicated article	558.274
012–491	TYLAN 100 (tylosin) Injection	522.2640
012–548	TYLAN (tylosin phosphate)/HYGROMIX (hygromycin B)	558.274
012–965	TYLAN (tylosin) Injection	522.2640
013–076	TYLAN (tylosin tartrate) Soluble Powder	520.2640
013–162	TYLAN Premix No. 10 (tylosin phosphate) Type A medicated article	558.625
013–388	TYLAN (tylosin phosphate)/HYGROMIX (hygromycin B)	558.274
015–166	TYLAN 100 Premix (tylosin phosphate) Type A medicated article	558.625
038–878	COBAN 45, 60, 90, 110 (monensin) Type A medicated article	558.355
041–275	TYLAN 40 Sulfa-G (tylosin phosphate and sulfamethazine) Type A medicated article	558.630
047–933	COBAN (monensin)/BACIFERM (bacitracin Zn)	558.355
049–463	COBAN (monensin)/BMD (bacitracin methylenedisalicyclate)	558.355
095–735	RUMENSIN 80 and 90 (monensin) Type A medicated article	558.355
104–646	RUMENSIN (monensin)/TYLAN (tylosin phosphate)	558.355
106–964	APRALAN (apramycin sulfate) Soluble Powder	520.110
110–315	COMPONENT E–C or E–S (progesterone and estradiol benzoate) with TYLAN	522.1940
115–732	STRESNIL (azaperone) Injection	522.150
118–123	COMPUDOSE 200 (estradiol); ENCORE (COMPUDOSE 400)	522.840
118–980	MONTEBAN (narasin) Type A medicated article	558.363
126–050	APRALAN 75 (apramycin sulfate) Soluble Powder	520.110
127–507	TYLAN 5, 10, 20, 40 Sulfa-G (tylosin phosphate and sulfamethazine) Type A medicated article	558.630
130–736	COBAN (monensin) Type A medicated article	558.355
135–468	Nicarbazin Type A medicated article	558.366
135–906	COMPONENT E–H (estradiol benzoate and testosterone propionate) with TYLAN	522.842
138–952	MAXIBAN (narasin and nicarbazin) Type A medicated article	558.366
140–863	PAYLEAN 9 and 45 (ractopamine HCl) Type A medicated article	558.500
140–872	POSILAC (sometribove Zn) Injectable Suspension	522.2112
140–926	BMD (bacitracin methylenedisalicyclate)/MAXIBAN (narasin and nicarbazin)	558.366
140–929	MICOTIL 300 (tilmicosin phosphate) Injectable Solution	522.2471
140–937	BMD (bacitracin methylenedisalicyclate)/COBAN (monensin)	558.355
140–942	FLAVOMYCIN (bambermycins)/MAXIBAN (narasin and nicarbazin)	558.366
140–947	LINCOMIX (lincomycin HCl)/MAXIBAN (narasin and nicarbazin)	558.366
140–955	COBAN (monensin)/FLAVOMYCIN (bambermycins)	558.355
141–064	PULMOTIL 90 (tilmicosin phosphate) Type A medicated article	558.618
141–277	COMFORTIS (spinosad) Tablets	520.2130
141–298	SUROLAN (miconazole nitrate, polymyxin B sulfate, prednisolone acetate) Otic Suspension	524.1445
141–321	TRIFEXIS (spinosad and milbemycin oxime) Tablets	520.2134
141–110	COBAN (monensin)/STAFAC (virginiamycin)	558.355
141–164	COBAN (monensin)/TYLAN (tylosin phosphate)	558.355
141–170	MONTEBAN (narasin)/TYLAN (tylosin phosphate)	558.363
141–172	PAYLEAN (ractopamine HCl)/TYLAN (tylosin phosphate)	558.500
141–198	TYLAN (tylosin phosphate)/BIO–COX (salinomycin sodium)	558.550
141–221	OPTAFLEXX 45 (ractopamine HCl) Type A medicated article	558.500
141–224	OPTAFLEXX (ractopamine HCl)/RUMENSIN (monensin)/TYLAN (tylosin phosphate)	558.500
141–225	OPTAFLEXX (ractopamine HCl) RUMENSIN (monensin)	558.500
141–234	OPTAFLEXX (ractopamine HCl)/RUMENSIN (monensin)/MGA (melengestrol acetate)	558.500
141–290	TOPMAX 9 (ractopamine HCl) Type A medicated article	558.500
141–233	OPTAFLEXX (ractopamine HCl)/RUMENSIN (monensin)/TYLAN (tylosin phosphate)/MGA (melengestrol acetate).	558.500
141–301	TOPMAX (ractopamine HCl)/COBAN (monensin)	558.500
141–337	RECUVYA (fentanyl) Topical Solution	524.916
141–340	SKYCIS 100 (narasin) Type A medicated article	558.363
141–343	PULMOTIL 90 (tilmicosin phosphate)/RUMENSIN 90 (monensin)	558.618
141–361	PULMOTIL AC (tilmicosin phosphate) Concentrate Solution	520.2471
141–392	IMPRESTOR (pegbovigrastim) Injection	522.1684
141–438	KAVAULT (avilamycin) Type A medicated article	558.68
141–439	INTEPRITY (avilamycin) Type A medicated article	558.68

TABLE 1—NADAS AND ANADAS TRANSFERRED FROM ELANCO ANIMAL HEALTH, A DIVISION OF ELI LILLY & CO. TO ELANCO US, INC.—Continued

File No.	Product name	21 CFR Section
200–221	COMPONENT TE–G (trenbolone acetate and estradiol); COMPONENT TE–G with TYLAN; COMPONENT TE–ID with TYLAN; COMPONENT TE–IS; COMPONENT TE–IS with TYLAN; COMPONENT TE–S; COMPONENT TE–S with TYLAN.	522.2477
200–224	COMPONENT T–H (trenbolone acetate) with TYLAN; COMPONENT T–S with TYLAN	522.2476
200–343	HEIFERMAX 500 (melengestrol acetate) Type A medicated article	558.342
200–346	COMPONENT TE–200 (trenbolone acetate and estradiol); COMPONENT TE–200 with TYLAN; COMPONENT TE–H; COMPONENT TE–H with TYLAN, COMPONENT TE–H.	522.2477
200–375	HEIFERMAX 500 (melengestrol acetate)/RUMENSIN (monensin)/TYLAN (tylosin phosphate)	558.342
200–422	HEIFERMAX 500 (melengestrol acetate) Liquid Premix/RUMENSIN (monensin)	558.342
200–424	HEIFERMAX (melengestrol acetate)/OPTAFLEXX (ractopamine HCl)/RUMENSIN (monensin)/TYLAN (tylosin phosphate).	558.342
200–427	HEIFERMAX 500 (melengestrol acetate) Liquid Premix/TYLAN (tylosin phosphate)	558.342
200–430	HEIFERMAX 500 (melengestrol acetate) Liquid Premix/BOVATEC (lasalocid)/TYLAN (tylosin phosphate).	558.342
200–448	HEIFERMAX 500 (melengestrol acetate)/OPTAFLEXX (ractopamine HCl)/RUMENSIN (monensin) ...	558.500
200–451	HEIFERMAX 500 (melengestrol acetate)/BOVATEC (lasalocid)	558.342
200–479	HEIFERMAX 500 (melengestrol acetate)/ZILMAX (zilpaterol)/RUMENSIN (monensin)	558.665
200–480	HEIFERMAX 500 (melengestrol acetate)/ZILMAX (zilpaterol)/RUMENSIN (monensin)/TYLAN (tylosin phosphate).	558.665
200–483	HEIFERMAX 500 (melengestrol acetate)/ZILMAX (zilpaterol)	558.665

Accordingly, the Agency is amending the regulations in 21 CFR parts 520, 522, 524, and 558 to reflect these changes of sponsorship.

Following these changes of sponsorship, Elanco Animal Health, A Division of Eli Lilly & Co. is no longer the sponsor of any approved application. Accordingly, the regulations are being amended to remove this firm from the lists of sponsors of approved applications in 21 CFR 510.600(c).

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, and 524

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, 524, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entry for "Elanco Animal Health, A Division of Eli Lilly & Co."; and in the table in paragraph (c)(2), remove the entry for "000986".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.110 [Amended]

■ 4. In § 520.110, in paragraph (b), remove "000986" and in its place add "058198".

§ 520.2130 [Amended]

■ 5. In § 520.2130, in paragraph (b), remove "000986" and in its place add "058198".

§ 520.2134 [Amended]

■ 6. In § 520.2134, in paragraph (b), remove "000986" and in its place add "058198".

§ 520.2471 [Amended]

■ 7. In § 520.2471, in paragraph (b), remove "000986" and in its place add "058198".

§ 520.2640 [Amended]

■ 8. In § 520.2640, in paragraph (b)(1), remove "000986" and in its place add "058198".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 9. The authority citation for part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.150 [Amended]

■ 10. In § 522.150, in paragraph (b), remove "000986" and in its place add "058198".

§ 522.840 [Amended]

■ 11. In § 522.840, in paragraph (b), remove "000986" and in its place add "058198".

§ 522.842 [Amended]

■ 12. In § 522.842, in paragraph (a)(2), remove "000986" and in its place add "058198".

§ 522.1684 [Amended]

■ 13. In § 522.1684, in paragraph (b), remove "000986" and in its place add "058198".

§ 522.1940 [Amended]

■ 14. In § 522.1940, in paragraph (a)(2), remove "000986" and in its place add "058198".

§ 522.2112 [Amended]

■ 15. In § 522.2112, in paragraph (b), remove "000986" and in its place add "058198".

§ 522.2471 [Amended]

■ 16. In § 522.2471, in paragraph (b), remove "000986" and in its place add "058198".

§ 22.2476 [Amended]

■ 17. In § 522.2476, in paragraph (a)(1), remove "021641" and in its place add "058198".

§ 522.2477 [Amended]

■ 18. In § 522.2477, in paragraph (b)(1), remove "000986" and in its place add "058198".

§ 522.2640 [Amended]

■ 19. In § 522.2640, in paragraph (b)(1), remove "000986" and in its place add "058198".

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 20. The authority citation for part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.916 [Amended]

■ 21. In § 524.916, in paragraph (b), remove "000986" and in its place add "058198".

§ 524.1445 [Amended]

■ 22. In § 524.1445, in paragraph (b), remove "000986" and in its place add "058198".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 23. The authority citation for part 558 continues to read as follows:

Authority: 21 U.S.C. 354, 360b, 360ccc, 360ccc–1, 371.

§ 558.68 [Amended]

■ 24. In § 558.68, in paragraph (b), remove "000986" and in its place add "058198".

§ 558.274 [Amended]

■ 25. In § 558.274, in paragraph (a)(1), remove "000986" and in its place add "058198"; and in paragraphs (c)(1)(i) and (ii) and (c)(2)(i) and (ii), in the "Sponsor" column, remove "000986" and in its place add "058198".

§ 558.342 [Amended]

■ 26. In § 558.342, in paragraph (b)(2), remove "000986" and in its place add "058198"; and in paragraphs (e)(1)(i) through (iv) and (e)(1)(ix) and (x), in the "Sponsor" column, remove "000986" and in its place add "058198".

§ 558.355 [Amended]

■ 27. In § 558.355, in paragraphs (b)(1) and (2), (b)(4) through (9), (b)(11) and (12), and (b)(14), in paragraphs (f)(1)(xiii)(*b*), (f)(1)(xxi)(*b*), (f)(1)(xxii)(*b*), (f)(1)(xxviii)(*b*), (f)(1)(xxix)(*b*), (f)(1)(xxxi)(*b*), paragraphs (f)(3)(i)(*b*)(*2*)(*iii*), (f)(3)(ii)(*b*), (f)(3)(xii)(*b*), in paragraphs (f)(4)(ii)(*b*) and (f)(4)(iii)(*b*), and in paragraph (f)(6)(i)(*b*)(*2*)(*iii*), remove "000986" and in its place add "058198".

§ 558.363 [Amended]

■ 28. In § 558.363, in paragraphs (a)(1), (3), and (8), and in paragraphs (d)(1)(ii)(B), (d)(1)(iii)(B), (d)(1)(iv)(B), (d)(1)(v)(B), and (d)(1)(vi)(B), remove "000986" and in its place add "058198".

§ 558.366 [Amended]

■ 29. In § 558.366, in paragraph (b), remove "000986" and in its place add "058198"; and in paragraph (d), in the six row entries beginning in the "Nicarbazin in grams per ton" column with "27 to 45", in the "Limitations" and "Sponsor" columns, remove "000986" wherever it occurs and in its place add "058198".

§ 558.500 [Amended]

■ 30. In § 558.500, in paragraph (b), remove "000986 and 054771" and in its place add "054771 and 058198"; and in paragraphs (e)(1)(i) through (iv) and (e)(2)(i) through (xiii), in the "Limitations" and "Sponsor" columns, remove "000986" wherever it occurs and in its place add "058198"; and in paragraphs (e)(3)(i) through (iv), in the "Sponsor" column, remove "000986" wherever it occurs and in its place add "058198".

§ 558.550 [Amended]

■ 31. In § 558.550, in paragraph (d)(1)(xxii)(B), remove "000986 and 016592" and in its place add "016592 and 058198".

§ 558.618 [Amended]

■ 32. In § 558.618, in paragraph (b), remove "000986 and 016592" and in its place add "016592 and 058198"; and in paragraphs (e)(1)(i) and (e)(2)(i) through (iii), in the "Sponsor" column, remove "000986" and in its place add "058198".

§ 558.625 [Amended]

■ 33. In § 558.625, in paragraph (b)(1), remove "To 000986" and in its place add "No. 058198".

§ 558.630 [Amended]

■ 34. In § 558.630, in paragraph (b)(1), remove "000986" and in its place add "058198".

§ 558.665 [Amended]

■ 35. In § 558.665, in paragraphs (e)(2), (3), (4), (5), (6), (8), (10), (11), and (12), in the "Limitations" column, remove "000986" wherever it occurs and in its place add "058198"; and in paragraphs (e)(2), (3), (4), and (6), in the "Sponsor" column, remove "000986" and in its place add "058198".

Dated: July 20, 2016.

William T. Flynn,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 2016–17501 Filed 7–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 890

[Docket No. FDA–2000–N–0158]

Physical Medicine Devices; Reclassification of Iontophoresis Device Intended for Any Other Purposes

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final order to reclassify iontophoresis devices intended for any other purposes, which are preamendments class III devices (regulated under product code EGJ), into class II (special controls) and to amend the device identification to clarify that devices intended to deliver specific drugs are not considered part of this regulatory classification.

DATES: This order is effective on July 26, 2016.

FOR FURTHER INFORMATION CONTACT: Jismi Johnson, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, Rm. 1524, Silver Spring, MD 20993, 301–796–6424, *jismi.johnson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act (Pub. L. 108–214), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), and the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144), among other amendments, established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513(d) of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

A preamendments device that has been classified into class III and devices found substantially equivalent by means of premarket notification procedures (510(k)) to such a preamendments device or to a device within that type (both the preamendments and substantially equivalent devices are referred to as preamendments class III devices) may be marketed without submission of a premarket approval application (PMA) until FDA issues a final order under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval or until the device is subsequently reclassified into class I or class II.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices) are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

On July 9, 2012, FDASIA was enacted. Section 608(a) of FDASIA amended section 513(e) of the FD&C Act, changing the mechanism for reclassifying a device under that section from rulemaking to an administrative order.

Section 513(e) of the FD&C Act governs reclassification of classified devices. This section provides that FDA may, by administrative order, reclassify a device based on "new information." FDA can initiate a reclassification under section 513(e) of the FD&C Act or an interested person may petition FDA to reclassify a preamendments device. The term "new information," as used in section 513(e), includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, *e.g., Holland-Rantos Co.* v. *United States Department of Health, Education, and Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the Agency is an appropriate basis for subsequent action where the reevaluation is made in light of newly available authority (see *Bell,* 366 F.2d at 181; *Ethicon, Inc.* v. *FDA,* 762 F.Supp. 382, 388–391 (D.D.C. 1991)), or in light of changes in "medical science" (*Upjohn,* 422 F.2d at 951). Whether data before the Agency are old or new data, the "new information" to support reclassification under section 513(e) must be "valid scientific evidence," as defined in section 513(a)(3) of the FD&C Act and 21 CFR 860.7(c)(2). (See, *e.g., General Medical Co.* v. *FDA,* 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Association* v. *FDA,* 766 F.2d 592 (D.C. Cir. 1985), cert. denied, 474 U.S. 1062 (1986).)

FDA relies upon "valid scientific evidence" in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the "valid scientific evidence" upon which the Agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, *e.g.,* the contents of a pending PMA. (See section 520(c) of the FD&C Act (21 U.S.C. 360j(c)).)

Section 513(e)(1) of the FD&C Act sets forth the process for issuing a final order to reclassify a device under that section. Specifically, prior to the issuance of a final order reclassifying a device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments to a public docket.

II. Regulatory History of the Device

FDA presented the complete regulatory history of these devices in the proposed order to reclassify iontophoresis devices for any other purposes, published in the **Federal Register** of September 22, 2014 (79 FR 56532) (the "proposed order"). The following are the most relevant pieces of the regulatory history of these devices. On August 28, 1979, the Agency published a proposed rule (44 FR 50520) for classification of all iontophoresis devices. On November 23, 1983, FDA issued a final rule in the **Federal Register** (48 FR 53032 at 53045) classifying iontophoresis devices into two different classes based on the device's intended use. Specifically, the rule classified iontophoresis devices into class II when intended to induce sweating for use in the diagnosis of cystic fibrosis or for other uses only when the labeling of the drug intended for use with the device bears adequate directions for the device's use with that drug (§ 890.5525(a) (21 CFR 890.5525(a))). These devices are currently under product code KTB. The rule classified iontophoresis devices into class III when intended for any other purposes (§ 890.5525(b)), but did not establish an effective date of requirement for premarket approval. These devices are currently under product code EGJ. In 2009, FDA published an order under section 515(i) of the FD&C Act (the "515(i) Order") requiring manufacturers of remaining class III devices for which regulations requiring PMAs had not been issued, including iontophoresis devices (§ 890.5525(b)), to submit a summary of information concerning those devices by August 7, 2009 (74 FR 16214, April 9, 2009).

As discussed in the proposed order, FDA considered the available information on iontophoresis devices intended for any other purposes and concluded that these devices, which are prescription devices, could be reclassified to class II, subject to the special controls identified in the proposed order, because there was sufficient information that these special controls, along with general controls, would provide reasonable assurance of safety and effectiveness. As required by section 513(e)(1) of the of the FD&C Act, FDA convened a meeting of a device classification panel described in section 513(b) of the FD&C Act, specifically the Orthopaedic and Rehabilitation Devices Panel (the 2014 Panel), to discuss whether iontophoresis devices intended for any other purposes should be reclassified or remain in class III on February 21, 2014 (Ref. 1). Please see the proposed order for additional information on the 2014 Panel. Ultimately, the panel concluded that sufficient information exists to establish special controls for these devices, and that special controls in combination with general controls could provide a reasonable assurance of safety and effectiveness; and thus, iontophoresis devices for any other purposes could be classified in class II.

FDA received and has considered three sets of comments on this proposed order, as discussed in section III of this document. Therefore, FDA has met the requirements for issuing a final order under section 513(e)(1) of the FD&C Act. FDA is not aware of new information since the 2014 Panel meeting that would provide a basis for a different recommendation or finding.

III. Public Comments in Response to the Proposed Order

In response to the proposed order, FDA received three sets of comments from various stakeholders. The comments and FDA's responses to the comments are summarized as follows.

(Comment 1) One comment requested that iontophoresis devices intended for any other purposes remain classified in class III, and that FDA call for PMAs for these products. The commenter disagreed that general controls and special controls are sufficient to provide a reasonable assurance of safety and effectiveness because of, among other reasons, the commenter located, at the time of the 2014 Panel meeting, 40 adverse event reports for a 5-year period that implicated device malfunction, 12 of which include burns, in a search of the Manufacturer and User Facility Device Experience (MAUDE) database for iontophoresis devices intended for any other purposes. The commenter stated that manufacturing inspections during the PMA process would help ensure that iontophoresis devices are constructed properly and, therefore, be less likely to cause third degree burns and other injuries.

(Response) FDA disagrees that iontophoresis devices intended for any other purposes should remain in class III and require PMA approval. As discussed in section V, "Risks to Health," of the proposed order, these devices have certain risks to health; however, the Agency believes that those risks can be mitigated by the special controls. For example, the special controls include performance testing that will mitigate the risks of burns, insufficient or excessive drug delivery, and/or infection. Performance testing using a drug approved for iontophoretic delivery, or a solution, identified in the labeling, will ensure that device malfunction or use error is minimized. Additionally, performance testing will ensure that iontophoresis devices intended for any other purposes maintain a safe pH level to minimize burns from a large electrical current density or highly acidic solution. Based on FDA's review of the MAUDE database, the number of adverse event reports identified for iontophoresis devices intended for any other purposes has decreased over the last several years, supporting that the risk of injury is low. Furthermore, in the past decade, there have been no recalls for iontophoresis devices intended for any other purposes.

(Comment 2) In addition, the commenter expressed concern that the special control requiring a labeling warning about adverse systemic effects was an insufficient safeguard because clinicians and patients may not see or read the label.

(Response) FDA takes issue with this statement. As stated in the proposed order, iontophoresis devices are restricted to patient use only upon the authorization of a practitioner licensed by law to administer or use the device and the device identification in § 890.5525(b) has been revised to clarify that these are prescription devices in accordance with § 801.109 (21 CFR 801.109). Per § 801.109(c), a prescription device, including iontophoresis devices intended for any other purposes, must include labeling that describes the indications and other information for use, such as methods, frequency and duration of administration, any relevant hazards, contraindications, side effects, and precautions under which the practitioners can use the device safely. Accordingly, clinicians will have access to and be aware of the warnings and precautions in the labeling, and as such, clinicians should be adequately informed of the risks associated with these devices. The clinician can inform the patients of the relevant risks. Therefore, the warning and precaution statements are an appropriate mitigation. FDA believes, therefore, that the special controls identified in this final order, in combination with general controls, will adequately mitigate the risks identified for iontophoresis devices intended for any other purposes and will provide a reasonable assurance of safety and effectiveness. FDA believes that iontophoresis devices may benefit patients by improving the noninvasive transdermal delivery of drugs or other solutions intended to treat various medical ailments or issues. As such, it is appropriate to reclassify these devices from class III (PMA) to class II (special controls). This is also the conclusion supported by the 2014 Panel.

(Comment 3) Two comments supported the reclassification of iontophoresis from class III to class II when these devices are intended for any other purposes. One comment, although overall supportive of reclassification, disagreed with the modified identification language and special controls. This comment asserted that the special controls, by requiring testing using a drug approved for iontophoretic delivery and labeling that contains language referring the user of the device to approved drug labeling, would create different regulatory paradigms for § 890.5525(a) and (b), such that a new drug application (NDA) and 510(k) are needed for iontophoresis devices falling under paragraph (b) of the regulation, and that a 510(k) is needed for paragraph (a), although the devices are similar. The commenter uses iontophoresis devices that deliver pilocarpine for the diagnosis of cystic fibrosis, regulated under § 890.5525(a), as an example of this inconsistency.

(Response) To the extent the commenter is raising issues related to products regulated under § 890.5525(a), such products are not the subject of this reclassification; and as such, are not addressed here. However, we do note that the commenter's statement about two different regulatory paradigms is incorrect. As stated previously in this document and in the proposed order, whether an iontophoresis device falls into § 890.5525(a) or (b), any drug that is intended to be used with these devices is required to have marketing authorization for iontophoretic administration of that drug. FDA intends to consider addressing the regulation of iontophoresis devices under § 890.5525(a) through a separate process.

In addition, iontophoresis devices intended for any other purposes regulated under § 890.5525(b) will need to comply with the applicable special controls prior to entering the market. "Any other purposes" means that these devices are neither intended for use in the diagnosis of cystic fibrosis nor for use with a specific drug. Devices for any other purposes may include those intended for general iontophoretic delivery of drugs that are approved for that route of administration or intended for use with specific solutions. One example of an iontophoretic device for "any other purposes" is one indicated for use with tap water for treatment of hyperhidrosis.

(Comment 4) The commenter also requested clarification on the identified risk of infection and the special control that states the patient-contacting elements of the device must be assessed for sterility.

(Response) FDA believes that patient-contacting elements should be assessed for sterility if the device is labeled as sterile, and has clarified the special control in question (§ 890.5525(b)(2)(vi)) to specify such.

IV. The Final Order

Based on the information discussed previously and in the preamble to the proposed order, the comments on the proposed order, a review of the MAUDE database, a review of current scientific literature, and panel deliberations (see the 2014 Panel transcript (Ref. 1)), FDA concludes that special controls, in conjunction with general controls, will provide reasonable assurance of the safety and effectiveness of iontophoresis devices intended for any other purposes. Under section 513(e) of the FD&C Act, FDA is adopting its findings as published in the preamble to the proposed order, with the modification of the special control pertaining to sterility (§ 890.5525(b)(2)(vi)) to clarify that only devices labeled as sterile must have their patient-contacting elements assessed for sterility. FDA is issuing this final order to reclassify iontophoresis devices intended for any other purposes from class III to class II and establish special controls by revising § 890.5525(b).

As noted previously, the identification for § 890.5525(b) has been clarified to specify that devices intended to deliver specific drugs, including those drugs that may have adverse systemic effects, like fentanyl, are not considered part of this regulatory classification (§ 890.5525(b)(1)).

Following the effective date of this final order, firms submitting a premarket notification (510(k)) for iontophoresis devices intended for any other purposes must comply with the applicable mitigation measures set forth in the codified special controls. This includes firms who are required to submit a new 510(k) under § 807.81(a)(3) because the device is about to be significantly changed or modified. Additionally, a firm whose device was legally in commercial distribution before May 28, 1976, or whose device has been found to be substantially equivalent to such a device, must also comply with the special controls to remain legally on the market.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the devices. FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness of iontophoresis devices intended for any other purposes, and therefore, this device type is not exempt from premarket notification requirements.

V. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This final order refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, have been approved under OMB control number 0910–0120; and the collections of information under part 801 have been approved under OMB control number 0910–0485.

In addition, FDA concludes that the labeling statement codified in this order does not constitute a "collection of information" under the PRA. Rather, the labeling statement is a public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public (5 CFR 1320.3(c)(2)).

VII. Codification of Orders

Prior to the amendments by FDASIA, section 513(e) of the FD&C Act provided for FDA to issue regulations to reclassify devices. Although section 513(e) as amended requires FDA to issue final orders rather than regulations, FDASIA also provides for FDA to revoke previously promulgated regulations by order. FDA will continue to codify classifications and reclassifications in the Code of Federal Regulations (CFR). Changes resulting from final orders will appear in the CFR as changes to codified classification determinations or as newly codified orders. Therefore, under section 513(e)(1)(A)(i) of the FD&C Act, as amended by FDASIA, in this final order, we are revoking the requirements in § 890.5525(b) related to the classification of iontophoresis devices intended for any other purposes as class III devices and codifying the reclassification of iontophoresis device intended for any other purposes into class II (special controls).

VIII. Reference

The following reference is on display in the Division of Dockets Management (HFA–305) Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *http://www.regulations.gov.* FDA has verified the Web site address, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. The panel transcript and other meeting materials for the February 21, 2014, Orthopedic and Rehabilitation Devices Panel are available on FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/OrthopaedicandRehabilitationDevicesPanel/ucm386335.htm.*

List of Subjects in 21 CFR Part 890

Medical devices, Physical medicine devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, part 890 is amended as follows:

PART 890—PHYSICAL MEDICINE DEVICES

■ 1. The authority citation for part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. In § 890.5525 revise paragraph (b) and remove paragraph (c) to read as follows:

§ 890.5525 Iontophoresis device.

* * * * *

(b) *Iontophoresis device intended for any other purposes*—(1) *Identification.* An iontophoresis device intended for any other purposes is a prescription device that is intended to use a current to introduce ions of drugs or non-drug solutions into the body for medical purposes other than those specified in paragraph (a) of this section, meaning that the device is not intended for use in diagnosis of cystic fibrosis, or a specific drug is not specified in the labeling of the iontophoresis device.

(2) *Classification.* Class II (special controls). The device is classified as class II. The special controls for this device are:

(i) The following performance testing must be conducted:

(A) Testing using a drug approved for iontophoretic delivery, or a solution, if identified in the labeling, to demonstrate safe use of the device as intended;

(B) Testing of the ability of the device to maintain a safe pH level; and

(C) If used in the ear, testing of the device to demonstrate mechanical safety.

(ii) Labeling must include adequate instructions for use, including sufficient information for the health care provider to determine the device characteristics that affect delivery of the drug or solution and to select appropriate drug or solution dosing information for administration by iontophoresis. This includes the following:

(A) A description and/or graphical representation of the electrical output;

(B) A description of the electrode materials and pH buffer;

(C) When intended for general drug delivery, language referring the user to drug labeling approved for iontophoretic delivery to determine if the drug they intend to deliver is specifically approved for use with that type of device and to obtain relevant dosing information; and

(D) A detailed summary of the device-related and procedure-related complications pertinent to use of the device, and appropriate warnings and contraindications, including the following warning:

Warning: Potential systemic adverse effects may result from use of this device. Drugs or solutions delivered with this device have the potential to reach the blood stream and cause systemic effects. Carefully read all labeling of the drug or solution used with this device to understand all potential adverse effects and to ensure appropriate dosing information. If systemic manifestations occur, refer to the drug or solution labeling for appropriate action.

(iii) Appropriate analysis/testing must demonstrate electromagnetic compatibility, electrical safety, thermal safety, and mechanical safety.

(iv) Appropriate software verification, validation, and hazard analysis must be performed.

(v) The elements of the device that may contact the patient must be demonstrated to be biocompatible.

(vi) The elements of the device that may contact the patient must be assessed for sterility, for devices labeled as sterile.

(vii) Performance data must support the shelf life of the elements of the device that may be affected by aging by demonstrating continued package integrity and device functionality over the stated shelf life.

Dated: July 20, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–17609 Filed 7–25–16; 8:45 am]
BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9779]

RIN 1545–BM63

Property Transferred in Connection With the Performance of Services

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to property transferred in connection with the performance of services. These final regulations affect certain taxpayers who receive property transferred in connection with the performance of services and make an election to include the value of substantially nonvested property in income in the year of transfer.

DATES: *Effective Date:* These regulations are effective on July 26, 2016.

Applicability Date: For dates of applicability, see § 1.83–2(g).

FOR FURTHER INFORMATION CONTACT: Thomas Scholz or Michael Hughes at (202) 317–5600 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 83 of the Internal Revenue Code (Code) addresses the tax consequences of a transfer of property in connection with the performance of services. Section 83(a) of the Code provides generally that the excess of the fair market value of the transferred property (determined without regard to any restriction other than a restriction which by its terms will never lapse) as of the first time that the transferee's rights in the property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over the amount (if any) paid for the property is included in the service provider's gross income for the taxable year which includes such time. Section 83(b) and § 1.83–2(a) permit the service provider to elect to include in gross income, as compensation for services, the excess (if any) of the fair market value of the property at the time of transfer over the amount (if any) paid for the property. Under section 83(b)(2), an election under section 83(b) must be made in accordance with the regulations thereunder. Under § 1.83–2(c), the election must be filed with the IRS no later than 30 days after the date on which the property is transferred, and a copy of the election must be submitted with the taxpayer's income tax return for the taxable year in which the property is transferred.

On July 17, 2015, the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) published a notice of proposed rulemaking (REG–135524–14) in the **Federal Register** (137 FR 42439) under section 83 of the Code eliminating the requirement that a copy of a section 83(b) election be submitted with the taxpayer's income tax return for the taxable year in which the property is transferred. Treasury and the IRS received no comments responding to the notice of proposed rulemaking. No public hearing was requested and no public hearing was held. Treasury and the IRS now adopt the proposed regulations as final regulations without modification.

Explanation of Provisions

These final regulations remove the second sentence in § 1.83–2(c) of the existing regulations, which requires that a taxpayer submit a copy of a section 83(b) election with the taxpayer's tax return for the year in which the property subject to the election was transferred. Accordingly, under these final regulations, a taxpayer is no longer required to file a copy of a section 83(b) election with the taxpayer's income tax return.

Taxpayers are reminded of their general recordkeeping responsibilities pursuant to section 6001 of the Code, and more specifically of the need to keep records that show the basis of property owned by the taxpayer.

Taxpayers must maintain sufficient records to show the original cost of the property and to support the tax treatment of the property transfer reported on the taxpayers' returns. Taxpayers must keep these records as long as they may be needed for the administration of any provision of the Code. Generally, this means records that support items shown on a return must be retained until the period of limitations for that return expires. See section 6501 of the Code. A copy of any section 83(b) election made with respect to property must be kept until the period of limitations expires for any return with respect to which the income inclusion or basis of the property is relevant.

Applicability Date

These regulations apply to property transferred on or after January 1, 2016. For transfers of property on or after January 1, 2015 and prior to January 1, 2016, the preamble to the proposed regulations provides that taxpayers may rely on the guidance in the proposed regulations (which is identical to the guidance contained in these final regulations).

Effect on Other Documents

Rev. Proc. 2012–29 (IRB 2012–28, 49) states that a taxpayer making a section 83(b) election must submit a copy of the election with his or her tax return for the taxable year in which such property was transferred. Effective as of July 26, 2016, Rev. Proc. 2012–29 is revoked, in part, to the extent it requires, inconsistent with these final regulations, a taxpayer to submit a copy of a section 83(b) election with his or her income tax return.

Statement of Availability of IRS Documents

Rev. Proc. 2012–29 is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS Web site at *http://www.irs.gov*.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these final regulations are Thomas Scholz and Michael Hughes, Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury participated in their development.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for Part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.83–2 is amended by revising paragraph (c) and adding paragraph (g) to read as follows:

§ 1.83–2 Election to include in gross income in year of transfer.

* * * * *

(c) *Manner of making election.* The election referred to in paragraph (a) of this section is made by filing one copy of a written statement with the internal revenue office with which the person who performed the services files his return.

* * * * *

(g) *Effective/applicability date.* Paragraph (c) of this section applies to property transferred on or after January 1, 2016.

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: April 20, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–17591 Filed 7–25–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. OSHA–2010–0034]

RIN 1218–AB70

Occupational Exposure to Respirable Crystalline Silica; Approval of Collections of Information

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule; Office of Management and Budget's (OMB) approval of collections of information.

SUMMARY: This rule is a technical amendment announcing that OMB has approved the collections of information contained in OSHA's standards for Occupational Exposure to Respirable Crystalline Silica and revising OSHA's regulations to reflect that approval. The OMB approval number is 1218–0266.

DATES: Effective July 26, 2016.

FOR FURTHER INFORMATION CONTACT: Todd Owen, OSHA, Directorate of Standards and Guidance, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION: OSHA published a final rule for the Occupational Exposure to Respirable Crystalline Silica standards on March 25, 2016 (81 FR 16286), after determining that employees exposed to respirable crystalline silica at the previous permissible exposure limits face a significant risk of material impairment to their health. The evidence in the record for this rulemaking indicates that workers exposed to respirable crystalline silica are at increased risk of developing silicosis and other nonmalignant respiratory diseases, lung cancer, and kidney disease. These requirements are necessary to provide protection from these hazards. The silica final rule becomes effective on June 23, 2016. Start-up dates for specific provisions are set in § 1910.1053(l) for general industry and maritime and in § 1926.1153(k) for construction.

Consistent with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), the **Federal Register** notice for the Occupational Exposure to Respirable Crystalline Silica final rule states that employers do not have to comply with the collections of information until OMB approves those collections of information and the

Department of Labor publishes a notice in the **Federal Register** announcing this approval and the control number assigned by OMB to the final rule's collections of information. Under 5 CFR 1320.5(b), an agency may not conduct or sponsor a collection of information unless: (1) The collection of information displays a current valid OMB control number and (2) the agency informs members of the public required to respond to the collection of information that they are not required to do so unless the agency displays a currently valid OMB control number for the collection of information.

On March 25, 2016, the Department of Labor submitted an information collection request for the final rule to OMB for approval in accordance with the PRA. On June 27, 2016, OMB approved the collections of information contained in the final rule and assigned these collections of information OMB Control Number 1218–0266, titled "Respirable Crystalline Silica Standards for General Industry, Shipyard Employment and Marine Terminals (29 CFR 1910.1053) and Construction (29 CFR 1926.1053)." The approval for collecting the information expires on June 30, 2019.

This revision of § 1910.8, § 1915.8 and § 1926.5 is a technical amendment to increase public awareness of OMB's approval of the collections of information. Opportunity for public comment on this rule is therefore unnecessary. The Agency notes that the public has already had the opportunity to comment on the collections of information and OMB has approved them.

The final Occupational Exposure to Respirable Crystalline Silica standards impose new collections of information for purposes of the PRA. The collections of information in the rule are needed to assist employers in identifying and controlling exposures to respirable crystalline silica in the workplace, and to address adverse health effects related to respirable crystalline silica. OSHA will also use records developed in response to these standards to determine compliance with OSHA standards.

The table below identifies the new collections of information contained in the final rule.

COLLECTION OF INFORMATION REQUIREMENTS IN THE FINAL STANDARD

Exposure assessment—General	29 CFR 1910.1053(d)(1), 29 CFR 1926.1153(c)(1), 29 CFR 1926.1153(d), and 29 CFR 1926.1153(d)(2)(i).
Exposure assessment—Performance option	29 CFR 1910.1053(d)(2) and 29 CFR 1926.1153(d)(2)(ii).
Exposure assessment—Scheduled monitoring option	29 CFR 1910.1053(d)(3)(i), 29 CFR 1910.1053(d)(3)(iii)–(d)(3)(v), 29 CFR 1926.1153(d)(2)(iii)(A), and 29 CFR 1926.1153(d)(2)(iii)(C)–(E).
Exposure assessment—Reassessment of exposures	29 CFR 1910.1053(d)(4) and 29 CFR 1926.1153(d)(2)(iv).
Exposure assessment—Notifying each affected employee in writing of the monitoring results or posting the results.	29 CFR 1910.1053(d)(6)(i) and 29 CFR 1926.1153(d)(2)(vi)(A).
Exposure assessment—Describing corrective actions being taken to reduce employee exposure to or below the PEL in the written notification when an exposure assessment indicates that that employee exposure is above the PEL.	29 CFR 1910.1053(d)(6)(ii) and 29 CFR 1926.1153(d)(2)(vi)(B).
Written exposure control plan—Establishing and implementing a written exposure control plan.	29 CFR 1910.1053(f)(2)(i), 29 CFR 1910.1053(f)(2)(i)(A)–(C), 29 CFR 1926.1153(g)(1), and 29 CFR 1926.1153(g)(1)(i)–(iv).
Written exposure control plan—Reviewing and evaluating the effectiveness of the written exposure control plan annually and updating it as necessary.	29 CFR 1910.1053(f)(2)(ii) and 29 CFR 1926.1153(g)(2).
Written exposure control plan—Making the written exposure control plan readily available for examination and copying.	29 CFR 1910.1053(f)(2)(iii) and 29 CFR 1926.1153(g)(3).
Methods of compliance—Compliance with 29 CFR part 1915 Subpart I	29 CFR 1910.1053(f)(3).
Respiratory protection—Instituting a respiratory protection program in accordance with 29 CFR 1910.134.	29 CFR 1910.1053(g)(2) and 29 CFR 1926.1153(e)(2).
Medical surveillance—Implementing medical surveillance of employees	29 CFR 1910.1053(i)(1)(i), 29 CFR 1910.1053(i)(2), 29 CFR 1910.1053(i)(2)(i)–(i)(2)(vi), 29 CFR 1910.1053(i)(3), 29 CFR 1910.1053(i)(7)(i), 29 CFR 1926.1153(h)(1)(i), 29 CFR 1926.1153(h)(2), 29 CFR 1926.1153(h)(2)(i)–(h)(2)(vi), 29 CFR 1926.1153(h)(3), and 29 CFR 1926.1153(h)(7)(i).
Medical surveillance—Ensuring that the physician or other licensed health care professional (PLHCP), or specialist, has certain specified information.	29 CFR 1910.1053(i)(4), 29 CFR 1910.1053(i)(4)(i)–(iv), 29 CFR 1910.1053(i)(7)(ii), 29 CFR 1926.1153(h)(4), 29 CFR 1926.1153(h)(4)(i)–(iv), and 29 CFR 1926.1153(h)(7)(ii).
Medical surveillance—Ensuring that the PLHCP, or specialist, explains to the employee the results of the medical examination and provides each employee with a copy of their written medical report.	29 CFR 1910.1053(i)(5), 29 CFR 1910.1053(i)(5)(i)–(iv), 29 CFR 1910.1053(i)(7)(iii), 29 CFR 1926.1153(h)(5), 29 CFR 1926.1153(h)(5)(i)–(iv), and 29 CFR 1926.1153(h)(7)(iii).
Medical surveillance—Obtaining a written medical opinion from the PLHCP, or specialist, and ensuring that each employee receives a copy of the PLHCP's written medical opinion.	29 CFR 1910.1053(i)(6)(i), 29 CFR 1910.1053(i)(6)(i)(A)–(C), 29 CFR 1910.1053(i)(6)(ii)(A)–(B), 29 CFR 1910.1053(i)(6)(iii), 29 CFR 1910.1053(i)(7)(iv), 29 CFR 1926.1153(h)(6)(i), 29 CFR 1926.1153(h)(6)(i)(A)–(C), 29 CFR 1926.1153(h)(6)(ii)(A)–(B), 29 CFR 1926.1153(h)(6)(iii), and 29 CFR 1926.1153(h)(7)(iv).
Hazard communication—Including respirable crystalline silica in the program established to comply with the hazard communication standard (29 CFR 1910.1200) and ensuring that each employee has access to labels on containers of crystalline silica and safety data sheets.	29 CFR 1910.1053(j)(1) and 29 CFR 1926.1153(i)(1).

COLLECTION OF INFORMATION REQUIREMENTS IN THE FINAL STANDARD—Continued

Making and maintaining air monitoring data and objective data records and medical surveillance records for specific periods.	29 CFR 1910.1053(k)(1)(i), 29 CFR 1910.1053(k)(1)(ii), 29 CFR 1910.1053(k)(1)(ii)(A)–(G), 29 CFR 1910.1053(k)(2)(i), 29 CFR 1910.1053(k)(2)(ii), 29 CFR 1910.1053(k)(2)(ii)(A)–(E), 29 CFR 1910.1053(k)(3)(i), 29 CFR 1910.1053(k)(3)(ii), 29 CFR 1910.1053(k)(3)(ii)(A)–(C), 29 CFR 1926.1153(j)(1)(i), 29 CFR 1926.1153(j)(1)(ii), 29 CFR 1926.1153(j)(1)(ii)(A)–(G), 29 CFR 1926.1153(j)(2)(i), 29 CFR 1926.1153(j)(2)(ii), 29 CFR 1926.1153(j)(2)(ii)(A)–(E) 29 CFR 1926.1153(j)(3)(i), 29 CFR 1926.1153(j)(3)(ii), and 29 CFR 1926.1153(j)(3)(ii)(A)–(C).
Recordkeeping—Making air monitoring data, objective data, and medical surveillance records available.	29 CFR 1910.1053(k)(1)(iii), 29 CFR 1910.1053(k)(2)(iii), 29 CFR 1910.1053(k)(3)(iii), 29 CFR 1926.1153(j)(1)(iii), 29 CFR 1926.1153(j)(2)(iii), and 29 CFR 1926.1153(j)(3)(iii).

Title: Respirable Crystalline Silica Standards for General Industry, Shipyard Employment and Marine Terminals and Construction.

Affected Public: Business or other for-profits.

Number of Respondents: 682,581 firms.

Frequency: Biennially; Once; Semi-annually; On occasion; Annually; Quarterly.

Average Time per Response: Varies from 5 minutes for the employer to make air-monitoring data, objective data and medical surveillance records available to employees to 16 hours for a large employer to develop a written exposure control plan.

Estimated Total Burden Hours: 12,118,364 hours.

Estimated Costs (Operation and Maintenance): $394 million.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this document. The authority for this document is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order 1–2012 (77 FR 3912 (January 25, 2012)).

Signed at Washington, DC, on July 15, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

For the reasons stated in the preamble, the Occupational Safety and Health Administration amends 29 CFR parts 1910, 1915, and 1926 as follows:

PART 1910—[AMENDED]

■ 1. The authority citation for part 1910 continues to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order Numbers 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable.

Sections 1910.6, 1910.7, 1910.8 and 1910.9 also issued under 29 CFR 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Public Law 106–113 (113 Stat. 1501A–222); Public Law 11–8 and 111–317; and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

Subpart A—General

■ 2. Amend § 1910.8 by adding to the table, in the proper numerical sequence, the entry "1910.1053" to read as follows:

§ 1910.8 OMB control numbers under the Paperwork Reduction Act.

* * * * *

29 CFR citation	OMB control No.
* * *	*
1910.1053	1218–0266
* * *	*

PART 1915—[AMENDED]

■ 3. The authority citation for part 1915 continues to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; 29 CFR part 1911.

Subpart A—General

■ 4. Amend § 1915.8 by adding to the table, in the proper numerical sequence, the entry "1915.1053" to read as follows:

§ 1915.8 OMB control numbers under the Paperwork Reduction Act.

* * * * *

29 CFR citation	OMB control No.
* * *	*
1915.1053	1218–0266
* * *	*

PART 1926—[AMENDED]

■ 5. The authority citation for part 1926 continues to read as follows:

Authority: 40 U.S.C. 3701 *et seq.;* 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

Subpart A—General

■ 6. Amend § 1926.5 by adding to the table, in the proper numerical sequence, the entry "1926.1153" to read as follows:

§ 1926.5 OMB control numbers under the Paperwork Reduction Act.

* * * * *

29 CFR citation	OMB control No.
* * *	*
1926.1153	1218–0266
* * *	*

[FR Doc. 2016–17270 Filed 7–25–16; 8:45 am]

BILLING CODE 4510–26–P

POSTAL SERVICE

39 CFR Part 111

Enterprise Payment System and Enterprise P.O. Boxes Online

AGENCY: Postal Service™.

ACTION: Interim final rule with request for comments.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to provide an enhanced method for commercial customers to pay for and manage their services online using a single account.

DATES: *Effective date:* September 6, 2016.

Comment deadline: Comments must be received on or before August 26, 2016.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service®, 475 L'Enfant Plaza SW., Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *ProductClassification@usps.gov,* with a subject line of "*Enterprise P.O. Box Online System.*" Faxed comments are not accepted. You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Ingrid Molinary at (202) 268–4138 or Jacqueline Erwin at (202) 268–2158.

SUPPLEMENTARY INFORMATION: The Postal Service continues to seek opportunities to work with mailers to improve products and services. Therefore, we have established a method for commercial customers to pay for and manage their services online using a single account.

The U.S. Postal Service is upgrading its payment architecture for business customers. The new Enterprise Payment System (EPS) will replace the current product-centric payment system with a centralized account management system enabling commercial customers to pay for and manage their services online using a single account.

EPS has been designed to be part of USPS products and services offered through the existing Business Customer Gateway (BCG) portal. Commercial customers who want to use EPS will need to be a registered BCG user, request access to EPS and open an Enterprise Payment Account (EPA) to pay for their products and services. EPA requires that the customers fund the account via Electronic Funds Transfer—either Automated Clearing House (ACH) Debit or ACH Credit.

The first feature of EPS will allow business customers to open, close, and pay for their P.O. Boxes and Caller Service numbers (including reserved numbers) online using the new Enterprise P.O. Boxes Online (EPOBOL). EPS customers are required to have an EPA to pay for EPOBOL service. Future phases of EPS will provide commercial customers functionality to pay for additional services.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

500 Additional Mailing Services

* * * * *

508 Recipient Services

* * * * *

4.0 Post Office Box Service

* * * * *

4.4 Basis of Fees and Payment

* * * * *

4.4.3 Payment

[Revise third sentence and add e to text in 4.4.3 as follows:]

* * * Customers may pay the fee using one of the following methods:

* * * e. Online using an Enterprise Payment Account (EPA) when business customers are registered at the Enterprise P.O. Boxes Online (EPOBOL) system. The EPA with automatic yearly renewal (at twice the semi-annual fee) is the required payment method for EPOBOL customers.

* * * * *

5.0 Caller Service

* * * * *

5.5 Basis of Fees and Payment

* * * * *

5.5.5 Payment

[Add text at the end of 5.5.5 as follows:]

* * * Registered customers may also pay the fee online using an Enterprise Payment Account (EPA). The EPA with automatic yearly renewal (at twice the semi-annual fee) is the required payment method for EPOBOL customers.

* * * * *

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–17425 Filed 7–25–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–21 and CP2010–36]

Update to Product Lists

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is updating the product lists. This action reflects a publication policy adopted by Commission order. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The product list, which is republished in its entirety, includes these updates.

DATES: *Effective Date:* July 26, 2016.

Applicability Dates: April 6, 2016, Priority Mail Contract 201 (MC2016–108 and CP2016–136); April 6, 2016, Priority Mail Contract 202 (MC2016–109 and CP2016–137); April 6, 2016, First-Class Package Service Contract 48 (MC2016–111 and CP2016–139); April 6, 2016, Priority Mail & First-Class Package Service Contract 17 (MC2016–112 and CP2016–140); April 7, 2016, Priority Mail Contract 203 (MC2016–110 and CP2016–138); April 8, 2016, Priority Mail & Parcel Select Contract 1 (MC2016–113 and CP2016–141); April 11, 2016, Priority Mail Contract 205 (MC2016–115 and CP2016–146); April 11, 2016, First-Class Package Service Contract 50 (MC2016–117 and CP2016–

148); April 11, 2016, Priority Mail Contract 204 (MC2016–114 and CP2016–145); April 11, 2016, First-Class Package Service Contract 49 (MC2016–116 and CP2016–147); April 19, 2016, First-Class Package Service Contract 51 (MC2016–119 and CP2016–149); April 19, 2016, Priority Mail Express & Priority Mail Contract 29 (MC2016–120 and CP2016–150); April 27, 2016, Priority Mail Contract 206 (MC2016–121 and CP2016–154); April 27, 2016, Priority Mail Contract 207 (MC2016–122 and CP2016–155); April 29, 2016, Priority Mail Contract 208 (MC2016–123 and CP2016–156); May 10, 2016, Priority Mail Contract 211 (MC2016–126 and CP2016–160); May 10, 2016, Priority Mail Contract 213 (MC2016–128 and CP2016–162); May 10, 2016, Priority Mail Contract 209 (MC2016–124 and CP2016–158); May 10, 2016, Priority Mail Contract 210 (MC2016–125 and CP2016–159); May 10, 2016, Priority Mail Contract 212 (MC2016–127 and CP2016–161); May 10, 2016, Priority Mail & First-Class Package Service Contract 18 (MC2016–129 and CP2016–163); May 10, 2016, First-Class Package Service Contract 52 (MC2016–130 and CP2016–164); May 25, 2016, Market Test of Global eCommerce Marketplace (GEM) Merchant (MT2016–1); June 2, 2016, Priority Mail Contract 217 (MC2016–134 and CP2016–171); June 2, 2016, Priority Mail Contract 218 (MC2016–135 and CP2016–172); June 2, 2016, Priority Mail Contract 219 (MC2016–136 and CP2016–173); June 2, 2016, Priority Mail Contract 216 (MC2016–133 and CP2016–170); June 3, 2016, First-Class Package Service Contract 54 (MC2016–141 and CP2016–178); June 3, 2016, Priority Mail & First-Class Package Service Contract 19 (MC2016–142 and CP2016–179); June 3, 2016, Priority Mail Express Contract 37 (MC2016–139 and CP2016–176); June 3, 2016, First-Class Package Service Contract 53 (MC2016–140 and CP2016–177); June 3, 2016, Priority Mail Contract 215 (MC2016–132 and CP2016–169); June 3, 2016, Priority Mail Express Contract 36 (MC2016–138 and CP2016–175); June 6, 2016, Priority Mail Contract 221 (MC2016–144 and CP2016–181); June 6, 2016, Priority Mail Contract 222 (MC2016–145 and CP2016–182); June 6, 2016, First-Class Package Service Contract 55 (MC2016–148 and CP2016–185); June 6, 2016, Priority Mail Contract 220 (MC2016–143 and CP2016–180); June 6, 2016, Priority Mail Contract 223 (MC2016–146 and CP2016–183); June 6, 2016, Parcel Select Contract 16 (MC2016–147 and CP2016–184); Parcel Select Contract 15 (MC2016–137 and CP2016–174); Global Expedited Package Services 6 Contracts (MC2016–149 and CP2016–188); Priority Mail Contract 224 (MC2016–150 and CP2016–190); Priority Mail Contract 225 (MC2016–151 and CP2016–191); Global Plus 3 Contracts (MC2016–152 and CP2016–196); First-Class Package Service Contract 57 (MC2016–155 and CP2016–218); First-Class Package Service Contract 56 (MC2016–154 and CP2016–217); Global Plus 1D (CP2016–193); Priority Mail Contract 227 (MC2016–156 and CP2016–219); Priority Mail Contract 226 (MC2016–153 and CP2016–216).

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6800.

SUPPLEMENTARY INFORMATION: This document identifies updates to the product list, which appears as 39 CFR Appendix B to Subpart A of Part 3020—Competitive Product List. Publication of the updated product list in the **Federal Register** is addressed in the Postal Accountability and Enhancement Act (PAEA) of 2006.

Authorization. The Commission process for periodic publication of updates was established in Docket Nos. MC2010–21 and CP2010–36, Order No. 445, April 22, 2010, at 8.

Changes. The product list is being updated by publishing a replacement in its entirety of 39 CFR Appendix B to Subpart A of Part 3020—Competitive Product List. The following products are being added, removed, or moved within the product list:

1. Priority Mail Contract 201 (MC2016–108 and CP2016–136) (Order No. 3215), added April 6, 2016.
2. Priority Mail Contract 202 (MC2016–109 and CP2016–137) (Order No. 3217), added April 6, 2016.
3. First-Class Package Service Contract 48 (MC2016–111 and CP2016–139) (Order No. 3218), added April 6, 2016.
4. Priority Mail & First-Class Package Service Contract 17 (MC2016–112 and CP2016–140) (Order No. 3219), added April 6, 2016.
5. Priority Mail Contract 203 (MC2016–110 and CP2016–138) (Order No. 3221), added April 7, 2016.
6. Priority Mail & Parcel Select Contract 1 (MC2016–113 and CP2016–141) (Order No. 3222), added April 8, 2016.
7. Priority Mail Contract 205 (MC2016–115 and CP2016–146) (Order No. 3228), added April 11, 2016.
8. First-Class Package Service Contract 50 (MC2016–117 and CP2016–148) (Order No. 3229), added April 11, 2016.
9. Priority Mail Contract 204 (MC2016–114 and CP2016–145) (Order No. 3230), added April 11, 2016.
10. First-Class Package Service Contract 49 (MC2016–116 and CP2016–147) (Order No. 3232), added April 11, 2016.
11. First-Class Package Service Contract 51 (MC2016–119 and CP2016–149) (Order No. 3251), added April 19, 2016.
12. Priority Mail Express & Priority Mail Contract 29 (MC2016–120 and CP2016–150) (Order No. 3252), added April 19, 2016.
13. Priority Mail Contract 206 (MC2016–121 and CP2016–154) (Order No. 3262), added April 27, 2016.
14. Priority Mail Contract 207 (MC2016–122 and CP2016–155) (Order No. 3265), added April 27, 2016.
15. Priority Mail Contract 208 (MC2016–123 and CP2016–156) (Order No. 3267), added April 29, 2016.
16. Priority Mail Contract 211 (MC2016–126 and CP2016–160) (Order No. 3281), added May 10, 2016.
17. Priority Mail Contract 213 (MC2016–128 and CP2016–162) (Order No. 3283), added May 10, 2016.
18. Priority Mail Contract 209 (MC2016–124 and CP2016–158) (Order No. 3285), added May 10, 2016.
19. Priority Mail Contract 210 (MC2016–125 and CP2016–159) (Order No. 3286), added May 10, 2016.
20. Priority Mail Contract 212 (MC2016–127 and CP2016–161) (Order No. 3287), added May 10, 2016.
21. Priority Mail & First-Class Package Service Contract 18 (MC2016–129 and CP2016–163) (Order No. 3288), added May 10, 2016.
22. First-Class Package Service Contract 52 (MC2016–130 and CP2016–164) (Order No. 3289), added May 10, 2016.
23. Market Test of Global eCommerce Marketplace (GEM) Merchant (MT2016–1) (Order No. 3319), added May 25, 2016.
24. Priority Mail Contract 217 (MC2016–134 and CP2016–171) (Order No. 3336), added June 2, 2016.
25. Priority Mail Contract 218 (MC2016–135 and CP2016–172) (Order No. 3337), added June 2, 2016.
26. Priority Mail Contract 219 (MC2016–136 and CP2016–173) (Order No. 3338), added June 2, 2016.
27. Priority Mail Contract 216 (MC2016–133 and CP2016–170) (Order No. 3340), added June 2, 2016.
28. First-Class Package Service Contract 54 (MC2016–141 and CP2016–178) (Order No. 3341), added June 3, 2016.
29. Priority Mail & First-Class Package Service Contract 19 (MC2016–142 and

CP2016–179) (Order No. 3342), added June 3, 2016.

30. Priority Mail Express Contract 37 (MC2016–139 and CP2016–176) (Order No. 3343), added June 3, 2016.

31. First-Class Package Service Contract 53 (MC2016–140 and CP2016–177) (Order No. 3344), added June 3, 2016.

32. Priority Mail Contract 215 (MC2016–132 and CP2016–169) (Order No. 3345), added June 3, 2016.

33. Priority Mail Express Contract 36 (MC2016–138 and CP2016–175) (Order No. 3346), added June 3, 2016.

34. Priority Mail Contract 221 (MC2016–144 and CP2016–181) (Order No. 3350), added June 6, 2016.

35. Priority Mail Contract 222 (MC2016–145 and CP2016–182) (Order No. 3351), added June 6, 2016.

36. First-Class Package Service Contract 55 (MC2016–148 and CP2016–185) (Order No. 3352), added June 6, 2016.

37. Priority Mail Contract 220 (MC2016–143 and CP2016–180) (Order No. 3353), added June 6, 2016.

38. Priority Mail Contract 223 (MC2016–146 and CP2016–183) (Order No. 3354), added June 6, 2016.

39. Parcel Select Contract 16 (MC2016–147 and CP2016–184) (Order No. 3355), added June 6, 2016.

40. Parcel Select Contract 15 (MC2016–137 and CP2016–174) (Order No. 3363), added June 8, 2016.

41. Global Expedited Package Services 6 Contracts (MC2016–149 and CP2016–188) (Order No. 3365), added June 14, 2016.

42. Priority Mail Contract 224 (MC2016–150 and CP2016–190) (Order No. 3367), added June 14, 2016.

43. Priority Mail Contract 225 (MC2016–151 and CP2016–191) (Order No. 3368), added June 14, 2016.

44. Global Plus 3 Contracts (MC2016–152 and CP2016–196) (Order No. 3378), added June 21, 2016.

45. First-Class Package Service Contract 57 (MC2016–155 and CP2016–218) (Order No. 3390), added June 28, 2016.

46. First-Class Package Service Contracts 56 (MC2016–154 and CP2016–217) (Order No. 3391), added June 28, 2016.

47. Global Plus 1D (CP2016–193) (Order No. 3395), added June 29, 2016.

48. Priority Mail Contract 227 (MC2016–156 and CP2016–219) (Order No. 3397), added June 29, 2016.

49. Priority Mail Contract 226 (MC2016–153 and CP2016–216) (Order No. 3399), added June 30, 2016.

The following negotiated service agreements have expired and are being deleted from the Competitive Product List:

1. Priority Mail Contract 29 (MC2011–3 and CP2011–4) (Order No. 574).
2. Priority Mail Contract 56 (MC2013–42 and CP2013–55) (Order No. 1695).
3. Priority Mail Contract 57 (MC2013–43 and CP2013–56) (Order No. 1696).
4. Priority Mail Contract 58 (MC2013–47 and CP2013–61) (Order No. 1712).
5. Priority Mail Express Contract 15 (MC2013–50 and CP2013–63) (Order No. 1729).

Updated product list. The referenced changes to the product list is incorporated into 39 CFR Appendix B to Subpart A of Part 3020—Competitive Product List.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LIST

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix B to Subpart A of Part 3020—Competitive Product List to read as follows:

Appendix B to Subpart A of Part 3020—Competitive Product List

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

Domestic Products*
  Priority Mail Express
  Priority Mail
  Parcel Select
  Parcel Return Service
  First-Class Package Service
  Retail Ground
International Products*
  Outbound International Expedited Services
  Inbound Parcel Post (at UPU rates)
  Outbound Priority Mail International
  International Priority Airmail (IPA)
  International Surface Air List (ISAL)
  International Direct Sacks—M-Bags
  Outbound Single-Piece First-Class Package International Service
Negotiated Service Agreements*
Domestic*
  Priority Mail Express Contract 8
  Priority Mail Express Contract 16
  Priority Mail Express Contract 17
  Priority Mail Express Contract 18
  Priority Mail Express Contract 19
  Priority Mail Express Contract 20
  Priority Mail Express Contract 21
  Priority Mail Express Contract 22
  Priority Mail Express Contract 23
  Priority Mail Express Contract 24
  Priority Mail Express Contract 25
  Priority Mail Express Contract 26
  Priority Mail Express Contract 27
  Priority Mail Express Contract 28
  Priority Mail Express Contract 29
  Priority Mail Express Contract 30
  Priority Mail Express Contract 31
  Priority Mail Express Contract 32
  Priority Mail Express Contract 33
  Priority Mail Express Contract 34
  Priority Mail Express Contract 35
  Priority Mail Express Contract 36
  Priority Mail Express Contract 37
  Parcel Return Service Contract 5
  Parcel Return Service Contract 6
  Parcel Return Service Contract 7
  Parcel Return Service Contract 8
  Parcel Return Service Contract 9
  Parcel Return Service Contract 10
  Priority Mail Contract 24
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Stacy L. Ruble,
Secretary.

[FR Doc. 2016–17632 Filed 7–25–16; 8:45 am]

BILLING CODE 7710–FW–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 722, 729, 731, and 752

RIN 0412–AA78

Various Administrative Changes and Clauses to the USAID Acquisition Regulation

AGENCY: U.S. Agency for International Development.

ACTION: Final rule.

SUMMARY: The U.S. Agency for International Development (USAID) is issuing a final rule amending the Agency for International Development Acquisition Regulation (AIDAR) to maintain consistency with Federal and Agency regulations and incorporate current and new USAID clauses into the regulation.

DATES: *Effective Date:* August 25, 2016.

FOR FURTHER INFORMATION CONTACT: Lyudmila Bond, Telephone: 202–567–4753 or Email: *lbond@usaid.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

USAID published a proposed rule in the **Federal Register** at 80 FR 69930 on November 12, 2015 soliciting public comments on the inclusion of several agency-specific clauses into the Agency for International Development Acquisition Regulation (AIDAR). The highlights of the changes are as follows:

- Sections 722.810 and 752.222–71 are added to encourage all USAID contractors performing and recruiting entirely outside the United States to develop and enforce employment nondiscrimination policies with regard to race, color, religion, sex (including pregnancy and gender identity), sexual orientation, marital status, parental status, political affiliation, national origin, disability, age, genetic information, veteran status or any other conduct that does not adversely affect the performance of the employee.
- New part 729, subpart 729.4, sections 729.204–70 and 752.229–70 require contractors to report the amounts of foreign taxes assessed by a foreign government on commodities financed with U.S. Foreign Assistance funds. The reporting is used to require the countries to reimburse the taxes or duties imposed on U.S. foreign assistance funds and for certain reporting to Congress.
- Sections 731.205–43 and 752.231–72 are added to mitigate the risk of inappropriate spending, as mandated by Executive Order 13589 "Promoting Efficient Spending" dated November 9, 2011. Contractors are required to obtain USAID written approval prior to committing costs related to USAID-funded conferences that meet the criteria provided in section 731.205–43.
- New section 752.7036 directs contractors to register with the Implementing Partner Notices (IPN) Portal, where USAID uploads contract modifications that affect multiple awards and provides notices to contractors.
- Section 752.7037 is added to promote child safeguarding when implementing USAID programs. The clause complements the USAID Counter Trafficking in Persons (C–TIP) Code of Conduct by expanding the range of

actions prohibited by USAID to include abuse, exploitation, or neglect of children.

B. Discussion and Analysis

One comment was received in response to the proposed rule, which USAID reviewed in the development of the final rule. No other comments were received.

A discussion of the comment received and the resulting changes are provided as follows:

Comment: One respondent recommended that USAID clarify the impact of the transfer of the requirements for prior written approval of conference costs from Agency internal policies into the AIDAR section 731.205–43. The respondent correctly pointed out that the intent of including these requirements in section 731.205–43 was to make the costs associated with a conferences meeting the criteria in the subpart unallowable, if the contractor did not obtain the required prior written approval. To minimize potential disagreement between the contractors and the Government, and to mitigate the risk of litigations, the respondent recommended including a statement in the section 731.205–43 to clarify this point. Doing so would also ensure that such costs are expressly unallowable and thus subject to the penalties provided in FAR 42.709.

Response: We concur with the respondent's recommendation. Based on this public comment, USAID is revising section 731.205–43 to include a new paragraph stating that costs associated with a conference, meeting the criteria in the subpart, are unallowable, when the required prior written approval for such costs is not obtained.

In addition, the final rule includes the following minor editorial changes from the proposed rule, based on further Agency review and comments from OMB and other agencies:

- A new paragraph was added to section 731.205–43 to specify that contracting Officers or the contracting officer's representatives will provide conference cost approvals following Agency internal procedures in Automated Directive System (ADS) Chapter 580.
- The clause at 752.231–72 is revised to make clear that contractors must obtain the required approvals for conferences from the contracting officer or contracting officer's representative.
- The definition of the universal bilateral modification at 752.3036 has been slightly edited to conform to the plain language requirements.
- The clause at 752.222–71 is revised for clarity.

C. Regulatory Planning and Review

This rule has been determined to be "nonsignificant" under the Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, is not subject to review. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The rule will not have an impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

E. Paperwork Reduction Act

The proposed rule does not establish a new collection of information that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 722, 729, 731, and 752

Government procurement.

For the reasons discussed in the preamble, USAID amends 48 CFR chapter 7 as set forth below:

CHAPTER 7—AGENCY FOR INTERNATIONAL DEVELOPMENT

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 722—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

■ 1. The authority citation for 48 CFR part 722 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

Subpart 722.8—Equal Employment Opportunity

■ 2. Revise section 722.810 to read as follows:

722.810 Solicitation provisions and contract clauses.

(a) The contracting officer must insert the clause at 752.222–70, USAID Disability Policy in section I of all solicitations and resulting contracts.

(b) The contracting officer must insert the clause at 752.222–71, Nondiscrimination in section I of all solicitations and resulting contracts.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

■ 3. Add part 729 to subchapter E to read as follows:

PART 729—TAXES

Subpart 729.4—Contract Clauses

729.402–70 Foreign contracts.

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

Subpart 729.4—Contract Clauses

729.402–70 Foreign contracts.

(a) Section 579 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of FY 2003 requires certain steps to prevent countries from imposing taxes [defined as Value Added Tax (VAT) or customs duties] on U.S. foreign assistance, or if imposed, requires the countries to reimburse the assessed taxes or duties. The Act also requires certain reporting to Congress. The Department of State has published guidance for implementing this section of the Act. See *http://2001-2009.state.gov/s/d/rm/c10443.htm* for further information.

(b) Contracting Officers (COs) must insert the clause at 752.229–71, Reporting of Foreign Taxes in section I of solicitations and resulting contracts that obligate or subobligate FY 2003 or later funds except for the following:

(1) Contracts funded with Operating Expense, Public Law 83–480 funds, or trust funds; or

(2) Contracts where there will be no commodity transactions in a foreign country over the amount of $500.

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 4. The authority citation for 48 CFR part 731 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

Subpart 731.2—Contracts With Commercial Organizations

■ 5. Add section 731.205–43 to read as follows:

731.205–43 Trade, business, technical and professional activity costs—USAID conference approval requirements.

(a) The contractor must obtain prior written approval from the contracting officer, or the contracting officer's representative (COR), if delegated in the Contracting Officer's Representative Designation Letter, for costs related to conferences funded in whole or in part with USAID funds when:

(1) Twenty (20) or more USAID employees are expected to attend.

(2) The net conference expense funded by USAID will exceed $100,000 (excluding salary of employees), regardless of the number of USAID participants.

(b) The contracting officer or the contracting officer's representative will follow the internal Agency procedures for review and approval of conference costs, as specified in Automated Directive System (ADS) chapter 580, prior to providing such approval to the contractor.

(c) Costs associated with a conference that meets the criteria above, incurred without USAID prior written approval, are unallowable.

(d) Contracting officers must insert the clause at 752.231–72 in all USAID-funded solicitations and contracts anticipated to include a requirement for a USAID-funded conference. See (48 CFR) AIDAR 752.231–72 for the definition of a conference and specific requirements and procedures.

SUBCHAPTER H—CLAUSES AND FORMS

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. The authority citation for 48 CFR part 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

■ 7. Add section 752.222–71 to read as follows:

752.222–71 Nondiscrimination.

As prescribed in (48 CFR) AIDAR 722.810(b), insert the following clause in section I of all solicitations and resulting contracts.

Nondiscrimination (June 2012)

FAR part 22 and the clauses prescribed in that part prohibit contractors performing in or recruiting from the U.S. from engaging in certain discriminatory practices.

USAID is committed to achieving and maintaining a diverse and representative workforce and a workplace free of discrimination. Based on law, Executive Order, and Agency policy, USAID prohibits discrimination in its own workplace on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, disability, age, veteran's status, sexual orientation, genetic information, marital status, parental status, political affiliation, and any other conduct that does not adversely affect the performance of the employee. USAID does not tolerate any type of discrimination (in any form, including harassment) of any employee or applicant for employment on any of the above-described bases.

Contractors are required to comply with the nondiscrimination requirements of the FAR. In addition, the Agency strongly encourages all its contractors (at all tiers) to develop and enforce nondiscrimination policies consistent with USAID's approach to workplace nondiscrimination as described in this clause, subject to applicable law.

(End of clause)

■ 8. Add section 752.229–71 to read as follows:

752.229–71 Reporting of foreign taxes.

As prescribed in (48 CFR) AIDAR 729.402–70, insert the following clause in section I of applicable solicitations and resulting contracts. The contracting officer must insert address and point of contact at the Embassy, Mission, or M/CFO/CMP as appropriate under paragraph (d) of this clause.

Reporting of Foreign Taxes (July 2007)

(a) The contractor must annually submit a report by April 16 of the next year.

(b) *Contents of report.* The report must contain:

(1) Contractor name.

(2) Contact name with phone, fax number and email address.

(3) Contract number(s).

(4) Amount of foreign taxes assessed by a foreign government [each foreign government must be listed separately] on commodity purchase transactions valued at $500 or more financed with U.S. foreign assistance funds under this agreement during the prior U.S. fiscal year.

(5) Only foreign taxes assessed by the foreign government in the country receiving U.S. assistance are to be reported. Foreign taxes by a third party foreign government are not to be reported. For example, if a contractor performing in Lesotho using foreign assistance funds should purchase commodities in South Africa, any taxes imposed by South Africa would not be included in the report for Lesotho (or South Africa).

(6) Any reimbursements received by the contractor during the period in paragraph (b)(4) of this clause regardless of when the foreign tax was assessed and any reimbursements on the taxes reported in paragraph (b)(4) of this clause received through March 31.

(7) Report is required even if the contractor did not pay any taxes during the reporting period.

(8) Cumulative reports may be provided if the contractor is implementing more than one program in a foreign country.

(c) *Definitions.* As used in this clause—

(1) *Agreement* includes USAID direct and country contracts, grants, cooperative agreements and interagency agreements.

(2) *Commodity* means any material, article, supply, goods, or equipment.

(3) *Foreign government* includes any foreign governmental entity.

(4) *Foreign taxes* means value-added taxes and customs duties assessed by a foreign government on a commodity. It does not include foreign sales taxes.

(d) *Where.* Submit the reports to: [contracting officer must insert address and point of contact at the Embassy, Mission, or CFO/CMP as appropriate].

(e) *Subagreements.* The contractor must include this reporting requirement in all applicable subcontracts and other subagreements.

(f) For further information see *http://2001–2009.state.gov/s/d/rm/c10443.htm.*

(End of clause)

■ 9. Add section 752.231–72 to read as follows:

752.231–72 Conference planning and required approvals.

As prescribed in (48 CFR) AIDAR 731.205–43, insert the following clause in section I of all solicitations and resulting contracts anticipated to include a requirement for a USAID-funded conference, as defined in the clause.

Conference Planning and Required Approvals (Aug 2013)

(a) *Definitions. Conference* means a seminar, meeting, retreat, symposium, workshop, training activity or other such event that requires temporary duty travel of USAID employees. For the purpose of this policy, an employee is defined as a U.S. direct hire; personal services contractor, including U.S. PSCs, Foreign Service National (FSN)/Cooperating Country National (CCN) and Third Country National (TCN); or a Federal employee detailed to USAID from another government agency.

(b) The contractor must obtain approval from the contracting officer or the contracting officer's representative (COR), if delegated in the Contracting Officer's Representative Designation Letter, as prescribed in 731.205–43, prior to committing costs related to conferences funded in whole or in part with USAID funds when:

(1) Twenty (20) or more USAID employees are expected to attend.

(2) The net conference expense funded by USAID will exceed $100,000 (excluding salary of employees), regardless of the number of USAID participants.

(c) Conferences approved at the time of award will be incorporated into the award. Any subsequent requests for approval of conferences must be submitted by the contractor to the USAID contracting officer representative (COR). The contracting officer representative will obtain the required agency approvals and communicate such approvals to the contractor in writing.

(d) The request for conference approval must include:

(1) A brief summary of the proposed event;

(2) A justification for the conference and alternatives considered, *e.g.,* teleconferencing and videoconferencing;

(3) The estimated budget by line item (*e.g.,* travel and per diem, venue, facilitators, meals, equipment, printing, access fees, ground transportation);

(4) A list of USAID employees attending and a justification for each; and the number of other USAID-funded participants (*e.g.,* institutional contractors);

(5) The venues considered (including government-owned facility), cost

comparison, and justification for venue selected if it is not the lowest cost option;

(6) If meals will be provided to local employees (a local employee would not be in travel status), a determination that the meals are a necessary expense for achieving Agency objectives; and

(7) A certification that strict fiscal responsibility has been exercised in making decisions regarding conference expenditures, the proposed costs are comprehensive and represent the greatest cost advantage to the U.S. Government, and that the proposed conference representation has been limited to the minimum number of attendees necessary to support the Agency's mission.

(End of clause)

■ 10. Add section 752.7036 to read as follows:

752.7036 USAID Implementing Partner Notices (IPN) portal for acquisition.

Insert the following clause in section I of all solicitations and resulting contracts, except for orders under indefinite delivery contracts issued pursuant to (48 CFR) FAR subpart 16.5; orders under Federal Supply (GSA) Schedules issued pursuant to (48 CFR) FAR subpart 8.4; and contracts and purchase orders awarded under the simplified acquisitions procedures of (48 CFR) FAR part 13.

USAID Implementing Partner Notices (IPN) Portal FOR Acquisition (July 2014)

(a) *Definitions.* As used in this clause—

"Universal" bilateral modification means a bilateral modification, as defined in FAR subpart 43.1, that updates or incorporates new FAR or AIDAR clauses, other terms and conditions, or special requirements, affecting all USAID awards or a class of awards, as specified in the Agency notification of such modification.

USAID Implementing Partner Notices (IPN) Portal for Acquisition (IPN Portal) means the single point where USAID uploads universal bilateral modifications, which can be accessed electronically by registered USAID contractors. The IPN Portal is located at *https://sites.google.com/site/ipnforacquisitions/.*

IPN Portal Administrator means the USAID official designated by the M/OAA Director, who has overall responsibility for managing the USAID Implementing Partner Notices Portal for Acquisition.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor acknowledges the requirement to:

(1) Register with the IPN Portal if awarded a contract resulting from this solicitation; and

(2) Receive universal bilateral modifications of this contract and general notices through the IPN Portal.

(c) *Procedure to register for notifications.* Go to: *https://sites.google.com/site/usaidipnforacquisitions/* and click the "Register" button at the top of the page. Contractor representatives must use their official organization email address when subscribing, not personal email addresses.

(d) *Processing of IPN portal modifications.* (1) The contractor may access the IPN Portal at any time to review all IPN Portal modifications; however, the system will also notify the contractor by email when the USAID IPN Portal Administrator uploads a universal bilateral modification for contractor review and signature. Proposed IPN Portal modifications distributed through the IPN Portal are applicable to all awards, unless otherwise noted in the proposed modification.

(2) Within 15 calendar days from receipt of the notification email from the IPN Portal, the contractor must do one of the following:

(i)(A) Verify applicability of the proposed modification to their award(s) per the instructions provided with each modification;

(B) Download the modification and incorporate the following information on the SF30 form: contract number, organization name, and organization mailing address as it appears in the basic award;

(C) Sign the hardcopy version; and

(D) Send the signed modification (by email or hardcopy) to the contracting officer for signature;

Note to paragraph (d)(2)(i): The contractor must not incorporate any other changes to the IPN Portal modification.

(ii) Notify the Contracting Officer in writing if the modification requires negotiation of the additional changes to terms and conditions of the contract; or

(iii) Notify the contracting officer that the contractor declines to sign the modification.

(3) Within 30 calendar days of receipt of a signed modification from the contractor, the contracting officer must provide the fully executed modification to the contractor or initiate discussions with the contractor. Bilateral modifications provided through the IPN Portal are not effective until both the contractor and the contracting officer sign the modification.

(End of clause)

■ 11. Add section 752.7037 to read as follows:

752.7037 Child safeguarding standards.

Insert the following clause in section I of all solicitations and contracts other than those for commercial items.

Child Safeguarding Standards (Aug. 2016)

(a) Implementation of activities under this award may involve children, or personnel engaged in the implementation of the award may come into contact with children, which could raise the risk of child abuse, exploitation, or neglect within this award. The contractor agrees to abide by the following child safeguarding core principles:

(1) Ensure compliance with host country and local child welfare and protection legislation or international standards, whichever gives greater protection, and with U.S. law where applicable;

(2) Prohibit all personnel from engaging in child abuse, exploitation, or neglect;

(3) Consider child safeguarding in project planning and implementation to determine potential risks to children that are associated with project activities and operations;

(4) Apply measures to reduce the risk of child abuse, exploitation, or neglect, including, but not limited to, limiting unsupervised interactions with children; prohibiting exposure to pornography; and complying with applicable laws, regulations, or customs regarding the photographing, filming, or other image-generating activities of children;

(5) Promote child-safe screening procedures for personnel, particularly personnel whose work brings them in direct contact with children; and

(6) Have a procedure for ensuring that personnel and others recognize child abuse, exploitation, or neglect; mandating that personnel and others report allegations; investigating and managing allegations; and taking appropriate action in response to such allegations, including, but not limited to, dismissal of personnel.

(b) The contractor must also include in the code of conduct for all personnel implementing USAID-funded activities, the child safeguarding principles in paragraphs (a)(1) through (6) of this clause.

(c) The following definitions apply for purposes of this clause:

(1) *Child.* A child or children are defined as persons who have not attained 18 years of age.

(2) *Child abuse, exploitation, or neglect.* Constitutes any form of physical abuse; emotional ill-treatment; sexual abuse; neglect or insufficient supervision; trafficking; or commercial, transactional, labor, or other exploitation resulting in actual or potential harm to the child's health, well-being, survival, development, or dignity. It includes, but is not limited to: Any act or failure to act which results in death, serious physical or emotional harm to a child, or an act or failure to act which presents an imminent risk of serious harm to a child.

(3) *Emotional abuse or ill treatment.* Constitutes injury to the psychological capacity or emotional stability of the child caused by acts, threats of acts, or coercive tactics. Emotional abuse may include, but is not limited to: Humiliation, control, isolation, withholding of information, or any other deliberate activity that makes the child feel diminished or embarrassed.

(4) *Exploitation.* Constitutes the abuse of a child where some form of remuneration is involved or whereby the perpetrators benefit in some manner. Exploitation represents a form of coercion and violence that is detrimental to the child's physical or mental health, development, education, or well-being.

(5) *Neglect.* Constitutes failure to provide for a child's basic needs within USAID-funded activities that are responsible for the care of a child in the absence of the child's parent or guardian.

(6) *Physical abuse.* Constitutes acts or failures to act resulting in injury (not necessarily visible), unnecessary or unjustified pain or suffering without causing injury, harm or risk of harm to a child's health or welfare, or death. Such acts may include, but are not limited to: Punching, beating, kicking, biting, shaking, throwing, stabbing, choking, or hitting (regardless of object used), or burning. These acts are considered abuse regardless of whether they were intended to hurt the child.

(7) *Sexual abuse.* Constitutes fondling a child's genitals, penetration, incest, rape, sodomy, indecent exposure, and exploitation through prostitution or the production of pornographic materials.

(d) The contractor must insert this clause in all subcontracts under this award.

(End of clause)

Dated: June 29, 2016.

Roy Plucknett,

Chief Acquisition Officer.

[FR Doc. 2016–16643 Filed 7–25–16; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 1206013412–2517–02]

RIN 0648–XE757

Reef Fish Fishery of the Gulf of Mexico; 2016 Recreational Accountability Measures and Closure for Gulf of Mexico Greater Amberjack

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota reduction and closure.

SUMMARY: NMFS implements accountability measures (AMs) for the greater amberjack recreational sector in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2016 fishing year through this temporary rule. NMFS has determined that the 2015 recreational annual catch limit (ACL) for Gulf greater amberjack was exceeded; therefore, NMFS reduces the greater amberjack recreational ACL and annual catch target (ACT) in 2016. NMFS has also determined that the recreational ACT for Gulf greater amberjack was reached prior to the June 1 annual season closure. Therefore, the greater amberjack recreational season in the Gulf EEZ will remain closed and will not be re-opening on August 1, 2016. This closure is necessary to protect the Gulf greater amberjack resource.

DATES: This rule is effective from 12:01 a.m., local time, August 1, 2016, until 12:01 a.m., local time, on January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *rich.malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the Gulf reef fish fishery, which includes greater amberjack, under the Fishery Management Plan for the Reef Fish Resources of the Gulf (FMP). The Gulf of Mexico Fishery Management Council (Council) prepared the FMP and NMFS implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All greater amberjack weights discussed in this temporary rule are in round weight.

The 2016 recreational ACL for Gulf greater amberjack specified in 50 CFR 622.41(b)(2)(iii) is 1,255,600 lb (569,531 kg) and the recreational ACT specified in 50 CFR 622.39(a)(2)(ii) is 1,092,372 lb (495,492 kg). However, in 2015, the recreational harvest of greater amberjack exceeded the 2015 recreational ACL by 57,930 lb (26,277 kg). Therefore, consistent with the requirements specified in 50 CFR 622.41(a)(2)(ii), NMFS reduces the recreational ACL for greater amberjack in 2016 to 1,197,670 lb (543,254 kg) and the recreational ACT to 1,034,442 lb (469,215 kg).

Under 50 CFR 622.41(a)(2)(i), NMFS is required to close the recreational sector for greater amberjack when the recreational ACT is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined the 2016 recreational ACT was reached prior to the annual season closure, which is effective from June 1 through July 31 each year. Accordingly, the recreational sector for Gulf greater amberjack will not re-open on August 1, because NMFS is closing recreational harvest of greater amberjack for the rest of the 2016 fishing year effective at 12:01 a.m., local time, August 1, 2016, until 12:01 a.m., local time, January 1, 2017, the start of the next fishing year.

During the recreational closure, the bag and possession limits for greater amberjack in or from the Gulf EEZ are zero. The prohibition on possession in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued applies regardless of whether greater amberjack were harvested in state or Federal waters.

The recreational sector for greater amberjack will reopen on January 1, 2017, the beginning of the 2017 recreational fishing year.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Gulf greater amberjack and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.41(a)(2)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the recreational sector for greater amberjack constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule establishing the closure provisions was subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect greater amberjack. Prior notice and opportunity for public comment would require time and would potentially allow the recreational sector to exceed the recreational ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 21, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–17633 Filed 7–21–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[160412328–6619–02]

RIN 0648–BF97

Atlantic Highly Migratory Species; North and South Atlantic 2016 Commercial Swordfish Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule adjusts the 2016 fishing season quotas for North and South Atlantic swordfish based upon 2015 commercial quota underharvests and international quota transfers consistent with the International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendations 13–02 and 13–03. This final rule also simplifies the annual North and South Atlantic quota adjustment process when the adjustment simply applies a previously-adopted formula or measure. Finally, this final rule removes extraneous regulatory text about the percentage of the annual baseline quota allocation that may be carried over in a given year. This final rule could affect commercial and recreational fishing for swordfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action implements ICCAT recommendations, consistent with the Atlantic Tunas Convention Act (ATCA), and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective on August 25, 2016.

ADDRESSES: Copies of the supporting documents—including the 2012 Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) for North Atlantic swordfish (Final Rule to Implement the 2012 Atlantic Swordfish Quotas and Other Measures); the 2007 EA, RIR, and FRFA for South Atlantic swordfish (Final Rule to Modify the North and South Atlantic Swordfish Commercial Quotas Based on 2006 ICCAT Recommendations); the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments; and associated documents—are available from the HMS Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms/* or by contacting Steve Durkee by phone at 202–670–6637.

FOR FURTHER INFORMATION CONTACT: Steve Durkee by phone at 202–670–6637 or Karyl Brewster-Geisz by phone at 301–427–8503.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated Atlantic HMS FMP (October 2, 2006; 71 FR 58058). Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement ICCAT recommendations.

For North Atlantic swordfish, this final action maintains the U.S. baseline quota of 2,937.6 metric tons (mt) dressed weight (dw) and authorizes the transfer of 18.8 mt dw from the United States to Mauritania as required by ICCAT Recommendation 13–02. For South Atlantic swordfish, this action maintains the U.S. South Atlantic swordfish quota at 75.2 mt dw (100 mt whole weight (ww)), carries over 75.1 mt dw of 2015 underharvest, and authorizes the transfer of 50 mt ww (37.6 mt dw) to Namibia, 25 mt ww (18.8 mt dw) to Côte d'Ivoire, and 25 mt ww (18.8 mt dw) to Belize, consistent with ICCAT Recommendation 13–03. More specific information regarding the quota calculations can be found below. Additional details regarding the quotas and other actions in this rule and their impacts can be found in the proposed rule (81 FR 36511, June 7, 2016).

North Atlantic Swordfish Quota

At the 2013 ICCAT annual meeting, Recommendation 13–02 was adopted, maintaining the North Atlantic swordfish total allowable catch (TAC) of 10,301 metric tons (mt) dressed weight (dw) (13,700 mt whole weight (ww)) through 2016. Of this TAC, the United States' baseline quota is 2,937.6 mt dw (3,907 mt ww) per year. ICCAT Recommendation 13–02 also includes an 18.8 mt dw (25 mt ww) annual quota transfer from the United States to Mauritania and limits underharvest carryover to 15 percent of a contracting party's baseline quota. Therefore, the United States may carry over a maximum of 440.6 mt dw (586.0 mt ww) of underharvest from 2015 to 2016. This final rule adjusts the U.S. baseline quota for the 2016 fishing year to account for the annual quota transfer to Mauritania and the 2015 underharvest.

The 2016 North Atlantic swordfish baseline quota is 2,937.6 mt dw (3,907 mt ww). The preliminary estimate of North Atlantic swordfish underharvest for 2015 was 2,181.6 mt dw as of December 31, 2015; therefore, NMFS is carrying forward 440.6 mt dw, the maximum carryover allowed under Recommendation 13–02. The 2,937.6 mt dw baseline quota is reduced by the 18.8 mt dw annual quota transfer to Mauritania and increased by the underharvest carryover of 440.6 mt dw, resulting in a final adjusted North Atlantic swordfish quota for the 2016 fishing year of 3,359.4 mt dw (2,937.6 − 18.8 + 440.6 = 3,359.4 mt dw). From that adjusted quota, 50 mt dw will be allocated to the reserve category for inseason adjustments and research, and 300 mt dw will be allocated to the incidental category, which includes recreational landings and landings by incidental swordfish permit holders, in accordance with regulations at 50 CFR 635.27(c)(1)(i). This would result in an allocation of 3,009.4 mt dw (3,359.4 − 50 − 300 = 3,009.4 mt dw) for the directed category, which would be split equally between two seasons in 2016 (January through June, and July through December) (Table 1).

For clarity, the final rule removes extraneous regulatory text about the percentage of the annual baseline quota allocation that may be carried over in a given year. Under prior ICCAT recommendations, 25 percent of the unused annual baseline could be carried over to the subsequent year. ICCAT Recommendation 13–02 changed the allowable carryover to 15 percent from 2015 on. This change simplifies the regulatory text by removing the reference to the 25-percent carryover allowance to avoid confusion.

South Atlantic Swordfish Quota

In 2013, ICCAT Recommendation 13–03 established the South Atlantic swordfish TAC at 11,278.2 mt dw (15,000 mt ww) for 2014, 2015, and 2016. Of this, the United States receives 75.2 mt dw (100 mt ww). Recommendation 13–03 limits the amount of South Atlantic swordfish underharvest that can be carried forward, and the United States may carry forward up to 100 percent of its baseline quota (75.2 mt dw). Recommendation 13–03 also included a total of 75.2 mt dw (100 mt ww) of quota transfers from the United States to other countries. These transfers were 37.6 mt dw (50 mt ww) to Namibia, 18.8 mt dw (25 mt ww) to Côte d'Ivoire, and 18.8 mt dw (25 mt ww) to Belize.

In 2015, U.S. fishermen landed no South Atlantic swordfish according to data available as of December 31, 2015. The adjusted 2015 South Atlantic swordfish quota was 75.1 mt dw due to nominal landings in previous years. Therefore, 75.1 mt dw of underharvest is available to carry over to 2016. NMFS is carrying forward 75.1 mt dw to be added to the 75.2 mt dw baseline quota. The quota is then reduced by the 75.2 mt dw of annual international quota transfers outlined above, resulting in an adjusted South Atlantic swordfish quota of 75.1 mt dw for the 2016 fishing year.

TABLE 1—2016 NORTH AND SOUTH ATLANTIC SWORDFISH QUOTAS

North Atlantic Swordfish Quota (mt dw)	2015	2016
Baseline Quota	2,937.6	2,937.6
International Quota Transfer	(−)18.8 (to Mauritania)	(−)18.8 (to Mauritania)
Total Underharvest from Previous Year[+]	1,337.4	2,181.6
Underharvest Carryover from Previous Year[+]	(+)440.6	(+)440.6
Adjusted Quota	3,359.4	3,359.4
Quota Allocation:		
Directed Category	3,009.4	3,009.4
Incidental Category	300	300
Reserve Category	50	50
South Atlantic Swordfish Quota (mt dw)	**2015**	**2016**
Baseline Quota	75.2	75.2
International Quota Transfers[*]	(−)75.2	(−)75.2
Total Underharvest from Previous Year[+]	75.1	75.1
Underharvest Carryover from Previous Year[+]	75.1	75.1
Adjusted quota	75.1	75.1

[+] Allowable underharvest carryover is now capped at 15 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic. The available 2014 and 2015 underharvests are based on data current as of December 31, 2015; they do not include dead discards, late reports, or changes to the data as a result of quality control adjustments.

[*] Under Recommendation 13–03, the United States transfers 75.2 mt dw (100 mt ww) annually to Namibia (37.6 mt dw, 50 mt ww), Côte d'Ivoire (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).

Modification of the Annual Quota Adjustment Public Notification Process

In the past, NMFS has published proposed swordfish quota specifications annually, allowed for a public comment period, and then issued a final rule. NMFS has done this when adopting new quotas, altering conservation and management measures pursuant to an ICCAT recommendation, or when simply adjusting the swordfish quotas based on formulas or measures codified in regulations previously adopted through notice-and-comment rulemaking (see, *e.g.*, regulatory text at 50 CFR 635.27(c)). Where NMFS is simply administering a pre-established formula that is already embodied in regulations, it has limited discretion over implementation. Inviting public notice and comment on these actions may have unnecessarily confused the regulated community, which has not understood the scope of these actions and NMFS' lack of discretion to make changes in these situations. Past public comments have included requests that go well beyond the scope of these actions, including suggestions to carry over underharvests in an amount exceeding the carryover limit, which would be inconsistent with ICCAT recommendations; requests not to carry over any underharvests, which would be inconsistent with the established regulatory formulas; and requests to shut down the commercial swordfish fishery.

To address public confusion and streamline the regulatory process, NMFS notifies the public that beginning in 2017, it will annually adjust the North and South Atlantic swordfish quotas through a final rule without an opportunity for public comment, as appropriate, when such adjustments simply apply a previously-adopted formula and are administrative in nature. NMFS takes such action consistent with requirements of the Administrative Procedure Act. NMFS would continue to undertake notice and comment rulemaking when adopting new quotas or otherwise altering conservation and management measures.

Response to Comments

During the proposed rule comment period, NMFS received one written comment; however, it was not relevant to the proposed action.

Changes From the Proposed Rule

The final rule contains no changes from the proposed rule.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Previously, NMFS determined that proposed rules to implement the North Atlantic swordfish quota (77 FR 25669, May 1, 2012) and South Atlantic swordfish quota (75 FR 35432, June 22, 2010) were consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of coastal states on the Atlantic, including the Gulf of Mexico and the Caribbean Sea. Pursuant to 15 CFR 930.41(a), NMFS provided the Coastal Zone Management Program of each coastal state a 60-day period to review the consistency determination and to advise the Agency of their concurrence. NMFS received concurrence with the consistency determinations from several states and inferred consistency from those states that did not respond within the 60-day time period. This final action to establish the 2016 North and South Atlantic swordfish quotas does not change the framework previously consulted upon; therefore, no additional consultation is required.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 21, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.27, revise paragraph (c)(3) to read as follows:

§ 635.27 Quotas.

* * * * *

(c) * * *

(3) *Annual adjustments.* NMFS will file with the Office of the Federal Register for publication notice of the following adjustments to or apportionments of the annual quota:

(i) Adjustments to the quota necessary to meet the objectives of the Consolidated Highly Migratory Species Fishery Management Plan consistent with the quota provisions of paragraph (c)(1) of this section.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that area. As necessary to meet management objectives, such adjustments may be apportioned to fishing categories and/or to the reserve. Carryover adjustments for the North Atlantic shall be limited to 15 percent of the annual baseline quota allocation. Carryover adjustments for the South Atlantic shall be limited to 100 mt ww (75.2 mt dw). Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons.

(iii) The dressed weight equivalent of the amount by which dead discards exceed the allowance specified at paragraph (c)(1)(i)(C) of this section will be subtracted from the landings quota in the following fishing year or from the reserve category.

* * * * *

[FR Doc. 2016–17630 Filed 7–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150916863–6211–02]

RIN 0648–XE745

Fisheries of the Exclusive Economic Zone Off Alaska; Exchange of Flatfish in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is exchanging unused flathead sole Community Development Quota (CDQ) for rock sole CDQ acceptable biological catch (ABC) reserves in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2016 total allowable catch of flathead sole and rock sole in the Bering Sea and Aleutian Islands management area to be harvested.

DATES: Effective July 26, 2016 through December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2016 flathead sole and rock sole CDQ reserves specified in the BSAI are 2,232 metric tons (mt), and 5,760 mt as established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) and following revision (81 FR 41253, June 24, 2016). The 2016 flathead sole and rock sole CDQ ABC reserves are 4,857 mt and 11,478 mt as established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) and following revision (81 FR 41253, June 24, 2016).

The Norton Sound Economic Development Corporation has requested that NMFS exchange 400 mt of flathead sole CDQ reserves for 400 mt of rock sole CDQ ABC reserves under § 679.31(d). Therefore, in accordance with § 679.31(d), NMFS exchanges 400 mt of flathead sole CDQ reserves for 400 mt of rock sole CDQ ABC reserves in the BSAI. This action also decreases and increases the TACs and CDQ ABC reserves by the corresponding amounts. Tables 11 and 13 of the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016), and following revision (81 FR 41253, June 24, 2016), are revised as follows:

TABLE 11—FINAL 2016 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific Ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI	BSAI	BSAI
TAC	7,900	7,000	9,000	20,585	57,150	144,365
CDQ	845	749	963	1,832	6,160	15,773
ICA	200	75	10	5,000	6,000	3,500
BSAI trawl limited access	685	618	161	0	0	14,979
Amendment 80	6,169	5,558	7,866	13,753	44,990	110,113
Alaska Groundfish Cooperative	3,271	2,947	4,171	1,411	11,129	43,748
Alaska Seafood Cooperative	2,898	2,611	3,695	12,342	33,861	66,365

Note: Sector apportionments may not total precisely due to rounding.

TABLE 13—FINAL 2016 AND 2017 ABC SURPLUS, COMMUNITY DEVELOPMENT QUOTA (CDQ) ABC RESERVES, AND AMENDMENT 80 ABC RESERVES IN THE BSAI FOR FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE

[Amounts are in metric tons]

Sector	2016 Flathead sole	2016 Rock sole	2016 Yellowfin sole	2017 Flathead sole	2017 Rock sole	2017 Yellowfin sole
ABC	66,250	161,100	211,700	64,580	145,000	203,500
TAC	20,585	57,150	144,365	21,000	57,100	144,000
ABC surplus	45,665	103,950	67,335	43,580	87,900	59,500
ABC reserve	45,665	103,950	67,335	43,580	87,900	59,500
CDQ ABC reserve	5,257	11,078	6,879	4,663	9,405	6,367
Amendment 80 ABC reserve	40,408	92,872	60,456	38,917	78,495	53,134
Alaska Groundfish Cooperative for 2016[1]	4,145	22,974	24,019	n/a	n/a	n/a
Alaska Seafood Cooperative for 2016[1]	36,263	69,898	36,437	n/a	n/a	n/a

[1] The 2017 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2016.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the flatfish exchange by the Norton Sound Economic Development Corporation in the BSAI. Since these fisheries are currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 14, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 20, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–17593 Filed 7–25–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 143
Tuesday, July 26, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6744; Directorate Identifier 2016–NE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Rolls-Royce plc (RR) RB211–Trent 875–17, RB211–Trent 877–17, RB211–Trent 884–17, RB211–Trent 884B–17, RB211–Trent 892–17, RB211–Trent 892B–17, and RB211–Trent 895–17 turbofan engines that have not incorporated RR modification 72–J195 in production or RR Service Bulletin (SB) RB.211–72–J195. This proposed AD was prompted by inspection of RR Trent 800 engines returned from service that revealed flame erosion and axial cracking on the aft face of the stage 3 disk rim of the high-pressure compressor (HPC) stage 1–4 rotor disks shaft. This proposed AD would require machining the HPC stage 3 inner shroud, inspecting the HPC stage 1–4 rotor disks shaft, and replacing the HPC stage 1–4 rotor disks shaft if found defective. We are proposing this AD to prevent uncontained failure of the HPC stage 1–4 rotor disks shaft, damage to the engine, and damage to the airplane.

DATES: We must receive comments on this NPRM by September 26, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this NPRM, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* Internet: *https://customers.rolls-royce.com/public/rollsroycecare.* You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6744; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6744; Directorate Identifier 2016–NE–12–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this NPRM.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2016–0078, dated April 20, 2016 (corrected April 27, 2016) (referred to hereinafter as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Inspection of Trent 800 engines returned from service revealed flame eroded areas and axial cracking on the rear Stage 3 disc of the High Pressure Compressor (HPC) Stage 1–4 drum. This is considered to be the result of a localised fire originating from an excessive rub at the stage 3–4 forward seal fin.
>
> This condition, if not detected and corrected, could lead to an uncontained engine failure and release of high energy debris, possibly resulting in damage to the aeroplane and injury to occupants.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6744.

Related Service Information Under 1 CFR Part 51

RR has issued SB RB.211–72–J195, dated February 26, 2016. The SB describes procedures to machine the HPC stage 3 inner shroud and to inspect the HPC stage 1–4 rotor disks shaft.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of the United Kingdom, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require machining the HPC stage 3 inner shroud, inspecting the HPC stage 1–4 rotor disks shaft, and replacing the HPC stage 1–4 rotor disks shaft if found defective.

Costs of Compliance

We estimate that this proposed AD affects 125 engines installed on airplanes of U.S. registry. We estimate it would take 8 hours to comply with the inspection required by this proposed AD. Machining the HPC stage 3 inner shroud is required during routine overhaul; therefore, no additional time is needed for this action. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $85,000.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Rolls-Royce plc: Docket No. FAA–2016–6744; Directorate Identifier 2016–NE–12–AD.

(a) Comments Due Date

We must receive comments by September 26, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce plc (RR) RB211–Trent 875–17, RB211–Trent 877–17, RB211–Trent 884–17, RB211–Trent 884B–17, RB211–Trent 892–17, RB211–Trent 892B–17, and RB211–Trent 895–17 turbofan engines that have not incorporated RR modification 72–J195, in production; or RR Service Bulletin RB.211–72–J195, dated February 26, 2016, in service.

(d) Reason

This AD was prompted by inspection of RR Trent 800 series engines returned from service that revealed flame erosion and axial cracking on the aft face of the stage 3 disk rim of the high-pressure compressor (HPC) stage 1–4 rotor disks shaft. We are issuing this AD to prevent uncontained failure of the HPC stage 1–4 rotor disks shaft, damage to the engine, and damage to the airplane.

(e) Actions and Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Before exceeding 5,000 duty cycles, since new or since last HPC stage 1–4 rotor disks shaft piece-part inspection, whichever occurs later, do the following:

(i) Perform dimensional, fluorescent penetrant, and visual inspections of the HPC stage 1–4 rotor disks shaft forward stage 3–4 seal fin and aft face of the stage 3 disk rim for wear, cracks, and flame erosion. Any findings of wear, cracks, or flame erosion constitute a failure of the HPC stage 1–4 rotor disks shaft.

(ii) Machine the HPC stage 3 inner shroud to the dimensions shown in Figure 1 of RR Service Bulletin (SB) RB.211–72–J195, dated February 26, 2016.

(2) If the HPC stage 1–4 rotor disks shaft fails the inspections required by paragraph (e)(1)(i) of this AD, remove and replace with a part eligible for installation before further flight.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(g) Related Information

(1) For more information about this AD, contact Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2016–0078, dated April 20, 2016 (corrected April 27, 2016), for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2016–6744.

(3) RR SB RB.211–72–J195, dated February 26, 2016, can be obtained from RR, using the contact information in paragraph (g)(4) of this proposed AD.

(4) For service information identified in this proposed AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* Internet: *https://customers.rolls-royce.com/public/rollsroycecare.*

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on July 13, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–17160 Filed 7–25–16; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1845 and 1852

RIN 2700–AE33

NASA Federal Acquisition Regulation Supplement: Contractor Financial Reporting of Property (2016–N024)

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA is proposing to amend the NASA Federal Acquisition Regulation Supplement (NFS) to add a monthly reporting requirement for contractors having custody of $10 million or more in NASA-owned Property, Plant and Equipment (PP&E).

DATES: Interested parties should submit comments to NASA at the address below on or before September 26, 2016 to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by NFS Case 2016–N024, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering "NFS Case 2016–N024" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "NFS Case 2016–N024." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "NFS Case 2016–N024" on your attached document.

○ *Email: andrew.orourke@nasa.gov.* Include NFS Case 2016–N024 in the subject line of the message.

○ *Fax:* (202) 358–3082.

○ *Mail:* National Aeronautics and Space Administration, Headquarters, Office of Procurement, Contract and Grant Policy Division, Attn: Andrew O'Rourke, LP–011 (Suite 5L32), 300 E. Street SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Andrew O'Rourke, NASA, Office of Procurement, Contract and Grant Policy Division, LP–011 (Suite 5L32); (202) 358–4560; email: *andrew.orourke@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

NASA is proposing to revise the NFS to add a monthly reporting requirement at 1852.245–73 for contracts in which the contractor has custody of NASA-owned PP&E valued at $10 million or more to ensure contractor-held PP&E are more accurately represented in NASA financial statements. In accordance with the Statement of Federal Financial Accounting Standard (SFFAS) No. 6, Accounting for Property, Plant, and Equipment, Federal agencies are—

- Required to record as property and equipment all items that meet certain characteristics, such as a useful life of two (2) years or more; and
- Permitted to establish individual capitalization thresholds and useful life policies due to their diverse size and uses of PP&E.

NASA Procedural Requirement (NPR) 9250.1, Property, Plant, and Equipment and Operating Materials and Supplies, which implements SSFAS No. 6, requires contractors with custody of NASA-owned PP&E to report financial property information to NASA on a yearly basis, and also requires contractors with custody of $10 million or more in NASA-owned PP&E to report financial property information to NASA on a monthly basis.

NFS subpart 1845.71 requires contractors in possession of NASA PP&E to submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors. NFS clause 1852.245–73, Financial Reporting of NASA Property in the Custody of Contractors, paragraph (a), states the Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with this clause, the instructions on the form and NFS subpart 1845.71, and any supplemental instructions for the current reporting period issued by NASA. Currently, if at any time during performance of the contract the amount of NASA property in the custody of the contractor is equal to or in excess of $10 million, the contractor has received instructions from the NASA contracting officer to submit a monthly report.

In order to ensure that PP&E are being presented fairly in the Agency's financial statements, independent auditors recommended to NASA that the NFS policy regarding property financial reporting be revised to specify that the supplemental instructions in paragraph (a) of the clause specifically includes the requirement that all contractors having custody of NASA PP&E with a value of $10 million or more are required to report this information on a monthly basis to NASA.

II. Discussion

The following sections of the NFS are being revised relative to PP&E reporting requirements:

- NASA is proposing to update NFS clause 1852.245–73 and the associated prescription at NFS 1845.107–70 regarding the reporting of NASA-owned and contractor-held PP&E that equals $10 million or more on a monthly basis.
- NASA is proposing to update NFS clause 1852.245–73 to add the cognizant NASA Center Industrial Property Officer to the distribution list for the hard copy NF 1018.
- NASA is proposing to update NFS clause 1852.245–73 to revise the annual report submission date from October 15th to October 31st to allow contractors additional time to develop and submit this report.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

NASA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the affected NASA contractors with custody of NASA-owned PP&E valued at $10 million or greater are primarily large businesses. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The objective of this rule is to add a monthly reporting requirement for contractors having custody of NASA-owned PP&E valued at $10 million or greater to ensure that contractor-held PP&E are more accurately represented in NASA financial statements in accordance with the Statement of Federal Financial Accounting Standard (SFFAS) No. 6, Accounting for Property, Plant, and Equipment and NASA Procedural Requirement (NPR) 9250.1, Property, Plant, and Equipment and Operating Materials and Supplies.

The requirements under this proposed rule would apply to any contract award (including contracts for supplies, services, construction, and major systems) that requires contractors to use Government property. According to NASA Property Records in Fiscal Year (FY) 2015 there were 643 contracts that required reporting NASA contractors with custody of Government property to report that property. Of the 643 contracts, approximately 20% or 129 contracts were with small business contractors. Of the 643 contracts, 32 contracts had NASA-owned and contractor-held PP&E with a value of $10 Million or more and required monthly reporting. Of those 32 contracts, only three were awarded to small business contractors.

The rule contains information collection requirements, however, this rule does not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 2700–0017, titled NASA Property in the Custody of Contractors and OMB Control No. 9000–0075, titled Government Furnished Property Requirements. The impact of this reporting requirement is minimal on small entities based on FY 2015 NASA property records that show only three contractors with custody of NASA PP&E valued at $10 million or more. No alternatives were identified that would meet the objectives of this proposed rule.

NASA invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities. NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (NFS Case 2016–N024) in correspondence.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35); however, these changes to the NFS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 2700–0017, titled NASA Property in the Custody of Contractors and OMB Control No. 9000–0075, titled Government Furnished Property Requirements.

List of Subjects in 48 CFR Parts 1845 and 1852

Government procurement.

Manuel Quinones,
NASA FAR Supplement Manager.

Accordingly, 48 CFR parts 1845 and 1852 are proposed to be amended as follows:

PART 1845—GOVERNMENT PROPERTY

■ 1. The authority citation for part 1845 is revised to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

■ 2. Amend section 1845.107–70 by revising paragraph (d) to read as follows:

1845.107–70 NASA solicitation provisions and contract clauses.

* * * * *

(d) The contracting officer shall insert the clause at 1852.245–73, Financial Reporting of NASA Property in the Custody of Contractors, in cost reimbursement solicitations and contracts and in all contracts in which the contractor has custody of NASA owned-property with a value of $10 million or more, unless all property to be provided is subject to the clause at 1852.245–71, Installation-Accountable Government Property. Insert the clause 1852.245–73 in other types of solicitations and contracts when it is known at award that property will be provided to the contractor or that the contractor will acquire property title to which will vest in the Government prior to delivery.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. The authority citation for part 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

■ 4. Amend section 1852.245–73 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), removing the words "in accordance this clause" and adding "in accordance with this clause" in its place; and

■ c. Revising paragraphs (b)(2) and (c).

The revised text reads as follows:

1852.245–73 Financial Reporting of NASA Property in the Custody of Contractors.

* * * * *

Financial Reporting of NASA Property in the Custody of Contractors (Date)

* * * * *

(b)(1) * * *

(2) The Contractor shall mail the original signed NF 1018 directly to the cognizant NASA Center Industrial Property Officer and a copy to the cognizant NASA Center Deputy Chief Financial Officer, Finance, unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(c)(1) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31st. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31st.

(2) Some activity may be estimated for the month in which the report is submitted, if necessary, to ensure the NF 1018 is received when due. However, contractors' procedures must document the process for developing these estimates based on planned activity such as planned purchases or NASA Form 533 (NF 533) Contractor Financial Management Report cost estimates. It should be supported and documented by historical experience or other corroborating evidence, and be retained in accordance with FAR Subpart 4.7, Contractor Records Retention. Contractors shall validate the reasonableness of the estimates and associated methodology by comparing them to the actual activity once that data is available, and adjust them accordingly. In addition, differences between the estimated cost and actual cost must be adjusted during the next reporting period. Contractors shall have formal policies and procedures, which address the validation of NF 1018 data, including data from subcontractors, and the identification and timely reporting of errors. The objective of this validation is to ensure that information reported is accurate and in compliance with the NASA FAR Supplement. If errors are discovered on NF 1018 after submission, the contractor shall contact the cognizant NASA Center Industrial Property Officer (IPO) within 30 days after discovery of the error to discuss corrective action.

(3) In addition to an annual report, if at any time during performance of the contract, NASA-owned property in the custody of the contractor has a value of $10 million or more, the contractor shall also submit a report no later than the 21st of each month in accordance with the requirements of paragraph (c)(2) of this clause.

(4) The Contracting Officer may, in NASA's interest, withhold payment until a reserve not exceeding $25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports in accordance with NFS subpart 1845.71, any monthly report in accordance with (c)(3) of this clause, and any supplemental instructions for the current reporting period issued by NASA. Such reserve shall be withheld until the Contracting Officer has determined that NASA has received the required reports. The withholding of any amount or the subsequent

payment thereof shall not be construed as a waiver of any Government right.

* * * * *

[FR Doc. 2016–17559 Filed 7–25–16; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160613514–6514–01]

RIN 0648–BG12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this action would revise the commercial quota and annual catch limit (ACL) and the recreational annual catch target (ACT) and ACL for red grouper in the Gulf of Mexico (Gulf) exclusive economic zone. The purpose of this proposed rule is to adjust the allowable red grouper harvest to achieve optimum yield based upon an updated Gulf red grouper stock assessment.

DATES: Written comments must be received on or before August 25, 2016.

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA–NMFS–2016–0077" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0077,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Richard Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2016/red_grouper_allowable_harvest/index.html.*

FOR FURTHER INFORMATION CONTACT: Richard Malinowski, Southeast Regional Office, NMFS, telephone: 727–824–5305, email: *rich.malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red grouper, is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to achieve on a continuing basis the optimum yield from federally managed fish stocks. This mandate is intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, while also protecting marine ecosystems.

The 2015 Southeast Data Assessment Review (SEDAR 42) for Gulf red grouper determined that the stock is not overfished or undergoing overfishing based upon the assessment's terminal year of 2013. As a result of SEDAR 42, the Council's Science and Statistical Committee (SSC) recommended increasing the Gulf red grouper overfishing limit (OFL) and acceptable biological catch (ABC). The SSC provided two alternative OFL and ABC recommendations: (1) As a declining yield stream for the 2016 through 2020 fishing years; and (2) as a constant catch. The Council chose the constant catch OFL and ABC (14.16 million lb (6.42 million kg) and 13.92 million lb (6.31 million kg), respectively), but chose a more conservative approach in setting the ACLs and ACTs, basing these catch levels on the minimum ABC of 10.77 million lb (4.89 million kg) from the declining yield stream. The Council's decision was based on testimony from the general public and commercial fishermen, who suggested the Council use caution when setting the catch levels. Thus, through this framework action, the Council is increasing the red grouper commercial and recreational ACTs and ACLs. The commercial ACT is codified as the commercial quota.

Management Measures Contained in This Proposed Rule

The proposed rule would revise the commercial quota and ACL, and the recreational ACT and ACL for Gulf red grouper. All weights described in this proposed rule are in gutted weight.

Commercial and Recreational Catch Limits

The current red grouper commercial quota and ACL, and recreational ACT and ACL were implemented through Amendment 32 to the FMP (77 FR 6988, February 10, 2012). The current commercial quota is 5,720,000 lb (2,590,000 kg) and the commercial ACL is 6,030,000 lb (2,735,000 kg). The current recreational ACT is 1,730,000 lb (785,000 kg) and the recreational ACL is 1,900,000 lb (862,000 kg).

This proposed rule would increase catch levels for both sectors. The commercial quota would be revised to 7,780,000 lb (3,528,949 kg) and the commercial ACL would be revised to 8,190,000 lb (3,714,922 kg). Additionally, the recreational ACT would be revised to 2,370,000 lb (1,075,014 kg) and the recreational ACL to 2,580,000 lb (1,170,268 kg).

For Gulf red grouper, 76 percent of the stock ACL is allocated to the commercial sector and 24 percent of the ACL is allocated to the recreational sector. The commercial quota is set by applying a 5 percent buffer to the commercial ACL to account for management uncertainty and the recreational ACT is set by applying a buffer to the recreational ACL of 8 percent to account for management uncertainty.

The revised commercial quota in this proposed rule would provide the commercial sector additional harvest opportunities as a result of the increased commercial quota beginning in 2016. The increase in the recreational ACL is expected to allow the recreational sector to remain open for the entire fishing year by avoiding the implementation of an in-season accountability measure.

Other Measures Contained in the Framework Action Not in This Proposed Rule

In addition to the measures contained in this proposed rule, this framework action would also revise the Gulf red grouper OFL and ABC based upon the results of SEDAR 42.

The stock OFL proposed in the framework action is 14,160,000 lb (6,422,868 kg), which is a 43 percent increase from the current stock OFL of 8,100,000 lb (3,674,098 kg). The ABC proposed in the framework action is a 35 percent increase to the current ABC. The current red grouper stock ABC is 7,930,000 lb (3,596,987 kg). The revised ABC would be 13,920,000 lb (6,314,006 kg).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the framework action, the FMP, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA) for this rule, as required by section 603 of the RFA, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if implemented, would have on small entities. A description of the proposed rule, why it is being considered, and the objectives of, and legal basis for this proposed rule are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, this proposed rule does not implicate the Paperwork Reduction Act.

This proposed rule, if implemented, would be expected to directly affect all commercial vessels that harvest red grouper under the FMP.

Only recreational anglers, who may fish from shore, man-made structures, private, rental, or charter vessels, and headboats, are allowed a bag or possession limit of reef fish species in the Gulf. Captains or crew members on charter vessels or headboats (for-hire vessels) cannot harvest or possess red grouper or other reef fish under the recreational bag limits. Therefore, only recreational anglers would be directly affected by the proposed changes to the red grouper recreational ACL and ACT. Recreational anglers, however, are not considered to be small entities under the RFA, so the economic effects of this proposed rule on these anglers are outside the scope of the RFA.

For-hire vessels sell fishing services to recreational anglers. The proposed changes to the recreational red grouper ACL and ACT would not directly alter the services sold by these vessels. Any change in demand for these fishing services and associated economic effects as a result of this proposed rule would be a consequence of a behavioral change by anglers, secondary to any direct effect on anglers and, therefore, an indirect effect of the proposed rule. Because the effects on for-hire vessels would be indirect, they fall outside the scope of the RFA.

As of March 7, 2016, there were 852 valid or renewable Federal Gulf commercial reef fish permits. Each of these permits is associated with an individual vessel. To harvest red grouper, a vessel permit must be linked to an individual fishing quota (IFQ) account and possess sufficient allocation (pounds of fish) for this species. IFQ accounts can be opened and valid permits can be linked to IFQ accounts at any time during the year. Allocation is distributed at the beginning of each fishing year based on the shares held by each IFQ participant. Eligible vessels can also purchase red grouper allocation or shares from other IFQ participants. On average (2010 through 2014), 397 vessels landed red grouper each year. Their average annual vessel-level revenue for 2010 through 2014 was approximately $99,000 (2015 dollars), of which $41,000 was from red grouper.

The maximum annual revenue reported by a single one of these vessels in 2014 was approximately $1.5 million (2015 dollars).

On December 29, 2015, the NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for RFA compliance purposes only (80 FR 81194, December 29, 2015). Under this rule, a business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

Pursuant to the RFA, and prior to July 1, 2016, an IRFA was developed for this regulatory action using SBA's size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are commercial fishing businesses and were considered small under the SBA's size standards, and they all would continue to be considered small under the new NMFS standard. Thus, NMFS has determined that the new size standard does not affect analyses prepared for this regulatory action. No other small entities that would be directly affected by this proposed rule have been identified.

Of the 852 commercial vessels eligible to fish for the species managed under the FMP, 397 of them are expected to be affected by this proposed rule (approximately 47 percent). Because all entities expected to be affected by this proposed rule are small entities, NMFS has determined that this proposed rule would affect a substantial number of small entities. Moreover, the issue of disproportionate effects on small versus large entities does not arise in the present case.

Using the Council's preferred alternative, this proposed rule would set the commercial ACL for red grouper at a constant catch value of 8,190,000 lb (3,714,922 kg). The commercial quota would be set at 95 percent of the commercial ACL. This would represent a 2,060,000 lb (934,400 kg) (36 percent) increase in the commercial quota relative to the status quo. The increased quota would be expected to result in an increase in commercial red grouper harvests, although this increase would be constrained by industry capacity, individual harvesters' profit maximization strategies, and current Federal management restrictions. Economic benefits may accrue to the commercial sector as a result of the increased landings and availability of red grouper allocation; however, these would be tempered by potential decreases in ex-vessel and IFQ allocation prices. It is not possible to quantify these economic effects with available data. For 2016, it is unlikely that the commercial fleet would be able to harvest the totality of the additional red grouper amounts made available by the increase in this proposed rule, because if implemented, this framework action would likely not be effective until early fall of 2016. In subsequent years, commercial fishermen may or may not be able to scale-up their operations to harvest the full quota. Price effects in both the ex-vessel and allocation transfer markets would depend on the price elasticity of demand for red grouper and red grouper allocation, respectively. Assuming the price elasticity of demand (percentage change in quantity demanded divided by the percentage change in price) for red grouper in the ex-vessel market is greater than one (*i.e.*, the percentage change in quantity demanded is greater than the percentage change in price), then an increase in landings would result in an increase in ex-vessel revenue and vice versa. Assuming the price elasticity of demand for red grouper allocation is greater than 1, IFQ shareholders would experience an overall increase in allocation transfer proceeds and vice versa. With respect to IFQ share value, if investors believe that the discounted future revenue stream associated with shares is greater under the new quota than under the current quota, then share prices would be expected to increase, otherwise they would remain the same or decrease. IFQ account holders that routinely purchase red grouper allocation would likely benefit from the wider availability and cheaper price of allocation. Again, these cost savings may be offset by changes in ex-vessel prices. Additionally, if the proposed rule is implemented in 2016, those that have already purchased annual allocation for use later in 2016 would incur supplementary costs because they would have likely overpaid for the allocation. Finally, the higher quota could result in increased congestion of fishing grounds, which in turn, could have a minor impact on harvesting costs.

The following discussion describes the alternatives that were not selected as preferred by the Council.

Four alternatives, including the preferred alternative discussed above, were considered for modifying the red grouper OFL, ABC, and commercial and recreational sector catch levels. The first alternative, the no action alternative, would not be expected to affect current commercial red grouper harvests. This alternative was not selected because the OFL and ABC would not be based on the best scientific information available and economic benefits derived from increased commercial and recreational harvests would be forgone, possibly preventing the achievement of OY.

The second alternative would adopt the OFL and ABC schedule recommended by the SSC for 2016 through 2020. Using the current sector allocation, the commercial and recreational ACLs would be set at 76 percent and 24 percent of the ABC, respectively. Under the second alternative, the commercial quota would be set at 95 percent of the commercial ACL and the recreational ACT would be set at 92 percent of the recreational ACL. This alternative would result in a 154 percent increase in the commercial quota in 2016, followed by successively lower quotas through 2020. In 2020 and subsequent fishing years, the red grouper commercial ACL and quota would be equivalent to the constant catch values specified in the preferred alternative. Economic effects to commercial vessels under this alternative would depend on the capacity of the fleet, individual harvesters' profit maximization strategies, current Federal management restrictions, and the effects of the quota increase on ex-vessel, IFQ allocation, and IFQ share prices. Given the very substantial size of the quota increases under this alternative, the 35-fathom (64-m) bottom longline closure during June through August each year, and the lack of issuance of new Eastern Gulf reef fish bottom longline endorsements, it is not likely that the commercial fleet would be able to harvest the entirety of its quota each year. Therefore, although positive direct economic benefits may result from additional red grouper harvests, increased availability of allocation, and potential increases in IFQ share value, they would be constrained by the industry's capacity and tempered by negative price effects. It is possible that negative price effects from increased allocation and landings could actually result in a decrease in allocation transfer proceeds and ex-vessel revenues, respectively. As for IFQ share prices, NMFS expects that they would fluctuate in the short-term as allocation and ex-vessel markets re-stabilize and investors speculate on future market and stock conditions, as well as Federal management measures. Finally, the higher commercial quotas could result in increased congestion of fishing grounds, which in turn could have a minor impact on harvesting costs. This alternative was not selected because the Council preferred to take a more conservative approach to setting the OFL, ABC, and commercial and recreational catch levels in order to account for scientific uncertainty in the stock assessment, specifically the below average red grouper recruitment in the Gulf, since 2005, and to reduce the chances of negative economic effects to commercial vessels from a large increase in the red grouper quota.

The third alternative would implement the constant catch OFL and ABC recommended by the SSC. Using the current sector allocation, the commercial and recreational ACLs would be set at 76 percent and 24 percent of the ABC, respectively. The commercial quota would be set at 95 percent of the commercial ACL and the recreational ACT would be set at 92 percent of the recreational ACL. This would represent a 76 percent increase in the commercial quota from the current quota. This alternative would result in a greater commercial quota compared to the preferred alternative, but a lesser quota compared to the second alternative through 2017. After 2017, the constant catch commercial ACL and quota under this alternative would be greater than both the preferred alternative and the second alternative. Once again, economic effects to commercial vessels under this alternative would depend on the capacity of the fleet, individual harvesters' profit maximization strategies, current Federal management restrictions, and the effects of the quota increase on ex-vessel and IFQ allocation and share prices. As was the case with the second alternative, given the very substantial size of the quota increase under this alternative, the 35-fathom (64-m) bottom longline closure during June through August each year, and the lack of issuance of new Eastern Gulf reef fish bottom longline endorsements, it is not likely that the commercial fleet would be able to harvest the entirety of its quota each year. Therefore, although positive direct economic benefits may result from additional red grouper harvests, increased availability of allocation, and potential increases in IFQ share value, they would be constrained by the industry's capacity and tempered by negative price effects. As discussed earlier, these negative price effects could actually outweigh the economic benefits of increased allocation and landings. Additionally, IFQ share prices would likely fluctuate in the short-term. There would also be an increased potential for fishing congestion and, in turn, increased harvesting costs. Because the commercial quota would be less than under the second alternative but greater than under the preferred alternative, it would be expected to fall somewhere in between those alternatives in terms of potential landings and likelihood of negative price effects for 2016 and 2017. In the long-term, this alternative would result in the greatest commercial quota and greatest potential landings. Because there is insufficient data to estimate the total expected change in landings and revenue, it is not possible to definitively state which alternative would be expected to result in the greatest economic benefits to the commercial sector. This alternative was not selected for the same reasons the Council did not select the second alternative.

List of Subjects in 50 CFR Part 622

Annual catch limits, Annual catch targets, Fisheries, Fishing, Gulf, Recreational, Red grouper, Reef fish, Quotas.

Dated: July 15, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.39, revise paragraph (a)(1)(iii)(C) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(C) *Red grouper*—7,780,000 lb (3,528,949 kg).

* * * * *

■ 3. In § 622.41, revise the last sentence of paragraph (e)(1) and paragraph (e)(2)(iv) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(e) * * *

(1) * * * The applicable commercial ACL for red grouper, in gutted weight, is 8,190,000 lb (3,714,922 kg).

(2) * * *

(iv) The recreational ACL for red grouper, in gutted weight, is 2,580,000 lb (1,170,268 kg). The recreational ACT for red grouper, in gutted weight, is 2,370,000 lb (1,075,014 kg).

* * * * *

[FR Doc. 2016–17518 Filed 7–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 160531477–6477–01]

RIN 0648–BG10

Atlantic Highly Migratory Species; Removal of Vessel Upgrade Restrictions for Swordfish Directed Limited Access and Atlantic Tunas Longline Category Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would remove vessel upgrading restrictions for vessels issued swordfish directed and Atlantic tunas Longline category limited access permits (LAPs). Currently, regulations allow for upgrading vessels or transferring permits to another vessel only if the vessel upgrade or permit transfer results in an increase of no more than 35 percent in length overall, gross registered tonnage, and net tonnage, as measured relative to the baseline vessel specifications (*i.e.,* the specifications of the vessel first issued an HMS LAP). The proposed rule eliminates these restrictions on upgrades and permit transfers. This action could affect vessel owners issued swordfish directed and Atlantic tunas Longline category LAPs and fishing in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. Swordfish handgear LAP upgrade restrictions are not being addressed in this proposed rule.

DATES: Written comments must be received by September 26, 2016. An operator-assisted, public conference call and webinar will be held on August 23, 2016, from 2:30 p.m. to 4:30 p.m., EST.

ADDRESSES: The conference call information is phone number 888–843–6165; participant passcode 6512640. Participants are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show a brief presentation via webinar followed by public comment. To join the webinar go to: *https://noaaevents2.webex.com/noaaevents2/onstage/g.php?MTID=e7bad02475e6061ff9227fb0842ccf332;* meeting number: 998 920 078; event password: NOAA. Participants that have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar.

You may submit comments on this document, identified by NOAA–NMFS–2016–0087, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0087,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Margo Schulze-Haugen, NMFS/SF1, 1315 East–West Highway, SSMC3, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Presentation materials and copies of the supporting documents are available from the HMS Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms/* or by contacting Steve Durkee by phone at 202–670–6637 or Rick Pearson by phone at 727–824–5399.

FOR FURTHER INFORMATION CONTACT: Steve Durkee by phone at 202–670–6637 or Rick Pearson by phone at 727–824–5399.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Atlantic swordfish and tuna fisheries are managed under the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.,* and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of

Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

In 1999, the National Marine Fisheries Service (NMFS) issued initial LAPs in the Atlantic swordfish and shark fisheries (64 FR 29090, March 28, 1999). To be eligible to fish with pelagic longline gear, a vessel had to be issued a swordfish directed or incidental LAP, a shark directed or incidental LAP, and an Atlantic tunas Longline category permit. After initial issuance of these permits, no new permits were issued by NMFS, but permits could be transferred to other vessels. Swordfish and shark directed LAPs included restrictions on vessel upgrading and permit transfers. Vessel upgrades and permit transfers were allowed only if the upgrade or permit transfer to another vessel did not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage relative to the respective specifications of the first vessel issued the initial LAP (the baseline vessel). Additionally, vessels could only be upgraded one time. These vessel upgrading restrictions were put into place to limit capacity in the swordfish fishery and to be consistent with the New England and Mid-Atlantic Fishery Management Council's permit policies at the time. Incidental LAPs for these species did not have vessel upgrading restrictions. Upgrading restrictions for Atlantic tunas Longline category LAPs were not explicitly implemented in the 1999 rule. As a practical effect, Atlantic tunas Longline category LAPs were limited by the same upgrading restrictions as the swordfish and shark directed permits due to the requirement to hold all three permits when fishing with pelagic longline gear.

On June 7, 2007 (72 FR 31688), NMFS issued a final rule amending the highly migratory species (HMS) fishery regulations to provide additional opportunities for U.S. vessels to more fully utilize the North Atlantic swordfish quota, recognizing the improved status of the species. The ICCAT Standing Committee on Research and Statistics (SCRS) had completed a stock assessment for North Atlantic swordfish in October 2006 indicating that the North Atlantic swordfish biomass had improved, possibly due to strong recruitment in the late 1990s combined with reductions in reported catch since then. The SCRS estimated that the stock biomass at the beginning of 2006 (B_{2006}) was at 99 percent of the biomass necessary to produce maximum sustainable yield (Bmsy), and the 2005 fishing mortality rate (F_{2005}) was estimated to be 0.86 times the fishing mortality rate at maximum sustainable yield (Fmsy). The 2007 action modified limited access vessel upgrading and permit transfer restrictions for vessels that were concurrently issued, or were eligible to renew, directed or incidental swordfish, directed or incidental shark, and Atlantic tunas Longline category LAPs (*i.e.*, vessels that were eligible to fish with pelagic longline gear). The rule also clarified that Atlantic tunas Longline category LAPs were subject to the same vessel upgrade restrictions as swordfish and shark directed LAPs. These measures allowed eligible vessel owners to upgrade their vessels by 35 percent in size (length overall, gross registered tonnage, and net tonnage) relative to the specifications of the baseline vessel, and removed upgrade limits on horsepower. Additionally, these permits could be upgraded more than once, provided that the new maximum upgrade limits were not exceeded.

NMFS now is considering removing these vessel upgrading restrictions for vessels issued swordfish directed and Atlantic tunas Longline category LAPs. Under the current regulatory framework and given the now rebuilt status of the North Atlantic swordfish stock, these restrictions have the effect of reducing flexibility in the pelagic longline fishery for persons interested in entering the fishery, purchasing a new vessel, or upgrading their existing vessel. Currently, a new entrant to the fishery must obtain an available permit with an associated maximum upgrade limit that accommodates his vessel size. This can limit and complicate the permit transfer as the owner searches for a permit suitable to the vessel. For a vessel owner who is already issued a swordfish directed and/or Atlantic tunas Longline category LAP that wants to purchase a new vessel or enlarge an existing vessel, the new or upgraded vessel may not exceed the permit's maximum vessel upgrading limit. This can limit and complicate the permit holder's purchasing options. Because there are usually only a small number of swordfish directed and Atlantic tunas Longline permits available, it is often difficult to find a permit that accommodates the target vessel size. NMFS also has heard from swordfish and tuna LAP permit holders that the vessel upgrading restrictions restrict their ability to transfer permits to newer vessels, which could have greater capacity, and address safety issues that exist with older vessels. For these reasons, and those discussed below, NMFS is proposing to remove vessel upgrading restrictions for swordfish directed and Atlantic tunas Longline LAPs.

Since implementing the vessel upgrade requirements in 1999 and modifying them in 2007, several important things have changed in the Atlantic HMS pelagic longline fishery. First, there are fewer swordfish permit holders. From the mid-to-late 1990s, more than 2,000 commercial open access swordfish permits were issued annually, and the pelagic longline fleet had become overcapitalized. The directed swordfish fishery was closed temporarily in 1995, and again in 1997, due to quota overages, and the swordfish stock was overfished (B/Bmsy = 0.715) with overfishing occurring (F/Fmsy = 1.169). Also in 1999, ICCAT adopted an international rebuilding plan for North Atlantic swordfish (ICCAT Recommendation 99–02) and passed a resolution to examine time/area closures and gear modification measures to reduce catches of undersized swordfish (Res. 99–04). Thus, in 1999, NMFS was particularly concerned about ensuring that pelagic longline fishing effort and fleet capacity were commensurate with the available swordfish quota, and the vessel upgrading restrictions were part of NMFS' management strategy to reduce capacity. That situation does not exist today. Fleet capacity has been reduced through the successful application of the initial LAP qualification criteria and attrition over time. In 1998, prior to the implementation of upgrade restrictions, 233 pelagic longline vessels among the 2,000 permit holders landed swordfish and thus were considered "active." The number of such vessels dropped to a low of 102 in 2006 and has remained between 109 and 122 vessels since then. Similarly, as of December 30, 1999, approximately 451 directed and incidental swordfish LAPs had been issued. By 2015, permit numbers had been reduced to 260 directed and incidental swordfish LAPs. Permit numbers are expected to remain at approximately these levels because no new LAPs are being issued.

Second, other requirements implemented since 1999, such as those designed to reduce bycatch in the pelagic longline fishery (*e.g.*, closed areas, bait requirements, individual bluefin tuna quotas, and gear restrictions), have also limited fishing effort. The directed North Atlantic swordfish quota has not been exceeded in almost 20 years and, in fact, has been underharvested for a number of years.

Third, during this same time period, the stock status of north Atlantic swordfish has significantly improved. In 2009, ICCAT declared that the stock has been fully rebuilt. Using domestic stock status thresholds, NMFS has also declared that the north Atlantic swordfish stock is not overfished and that overfishing is not occurring.

In addition to limiting capacity in the HMS pelagic longline fishery, a secondary goal for implementing the specific swordfish directed and Atlantic tunas Longline vessel upgrade limits adopted in 1999 was to be consistent with similar regulations previously established by the New England and Mid-Atlantic Fishery Management Councils (Councils). In August 2015, the Councils removed gross registered and net tonnage limits (80 FR 51754) so that only length and horsepower limits remain in effect. Because this HMS action would remove all upgrade restrictions for vessels issued swordfish directed and Atlantic tunas Longline category LAPs, only the Council regulations would limit vessel upgrading for vessels issued LAPs for both Council-managed species and HMS. Thus, there would be no conflict between Council and HMS vessel upgrade restrictions. This action would simplify compliance for dually permitted vessels and provide greater flexibility for HMS permitted vessels.

The overall reduction in pelagic longline fleet capacity, in combination with the totality of effort controls implemented since 1999, sufficiently limits the fishery's capacity. Vessel upgrading and related permit transfer restrictions are no longer necessary or relevant for the Atlantic HMS pelagic longline fishery at this time. Thus, this proposed rule would remove all upgrading restrictions for vessels issued swordfish directed and Atlantic tunas Longline category LAPs. Although limited in scope, this action would ease a barrier to entry in the pelagic longline fishery, facilitate limited access permit transfers, provide increased business flexibility, and help vessel owners address safety issues.

The proposed action would provide more flexibility for current permit holders by eliminating the upgrading restrictions for swordfish directed and Atlantic tunas Longline category LAP permit holders. Eliminating vessel upgrading restrictions would have short- and long-term minor beneficial socioeconomic impacts, since it would allow fishermen to buy, sell, or transfer swordfish directed and Atlantic tunas Longline category LAPs without concerns about exceeding the maximum upgrade limit for the permits.

Removing the upgrading restrictions is not expected to affect the number of swordfish and tunas being landed by vessels, as these amounts are determined by established quotas and effort controls (including, for example, individual vessel quotas for bluefin tuna) not the size of the vessel. Thus, this action is expected to have no ecological impacts and would not result in additional interactions with protected resources, given the other restrictions on the Atlantic HMS pelagic longline fishery.

Request for Comments

NMFS is requesting comments on any of the measures or analyses described in this proposed rule. NMFS is specifically requesting comments on its decision to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities and on the analysis below that supports that decision and on our assessment that relieving the restrictions would have no ecological impacts. During the comment period, NMFS will hold one conference call and webinar for this proposed rule. The conference call and webinar will be held on August 23, 2016, from 2:30–4:30 p.m. EST. Please see the **DATES** and **ADDRESSES** headings for more information.

The public is reminded that NMFS expects participants on phone conferences to conduct themselves appropriately. At the beginning of the conference call, a representative of NMFS will explain the ground rules (*e.g.,* all comments are to be directed to the agency on the proposed action; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; attendees may not interrupt one another; etc.). NMFS representative(s) will structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and those that do not may be removed from the conference call.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, the Atlantic Tuna Convention Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS has made a preliminary determination that this action qualifies to be categorically excluded from the requirement to prepare an environmental assessment in accordance with NMFS' Environmental Review Procedures for Implementing the National Environmental Policy Act (NOAA Administrative Order 216–6), subject to further consideration after public comment. This action falls within the scope of effects already analyzed in the Final Environmental Impact Statement (EIS) prepared for the 2006 Consolidated Atlantic HMS FMP, the 2012 Environmental Assessment prepared for the rulemaking on North and South Atlantic Swordfish Quotas and Management Measures (77 FR 45273, July 31, 2012), and the Final EIS for Amendment 7 to the 2006 Consolidated HMS FMP. Section 6.03a.3.(b)(2) of NOAA Administrative Order 216–6 specifies that certain actions may be categorically excluded from further NEPA analysis including minor changes to a management plan when those effects have already been analyzed and additional effects are not expected. This action will have no additional effects that were not already analyzed, and the action is not precedent-setting or controversial. It would not affect the number of swordfish and tunas being landed by vessels and would not result in additional interactions with protected resources, as these amounts are determined by the established quotas and effort controls, not the size of the vessel, and the effects of those established quotas and effort controls have already been analyzed.

NMFS has determined that this proposed rule will have no effects on any coastal use or resource, and a negative determination pursuant to 15 CFR 930.35 is not required. Therefore, pursuant to 15 CFR 930.33(a)(2), coordination with appropriate state agencies under section 307 of the Coastal Zone Management Act (CZMA) is not required. No changes to the human environment are anticipated because removing the vessel upgrading restrictions would not affect the number of swordfish and tunas being landed by vessels, as these amounts are determined by the established quotas and effort controls, not the size of the vessel.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities under section 605(b) of the Regulatory Flexibility Act (RFA).

The U.S. Atlantic swordfish and tuna fisheries are managed under the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. As discussed above, the purpose of this proposed rule is to remove vessel upgrading restrictions for vessels issued swordfish directed and Atlantic tunas Longline category LAPs to ease a barrier to entry in the pelagic longline fishery, facilitate limited access permit transfers, provide increased business flexibility, and help vessel owners address safety issues.

Section 603(b)(3) of the Regulatory Flexibility Act requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Under SBA's regulations, an agency may develop its own industry-specific size standards after consultation with the SBA Office of Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for RFA compliance purposes only (80 FR 81194, December 29, 2015). The $11 million standard became effective on July 1, 2016, and is to be used in place of the SBA's current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. Id. at 81194.

NMFS considers all HMS pelagic longline permit holders to be small entities because these vessels have reported annual gross receipts of less than $11 million for commercial fishing. NMFS has determined that this proposed rule would apply to the 280 permit holders that were issued Atlantic tunas Longline category LAPs in 2015, since these permit holders also already possess the required swordfish directed or incidental permits to fish with pelagic longline gear.

The economic effects of this proposed rule to remove vessel upgrading restrictions for vessels issued swordfish directed and Atlantic tunas Longline category LAPs would likely not result in any significant adverse impacts on the 280 permit holders. The removal of vessel upgrading restrictions would reduce a regulatory burden that prevents fishermen from upgrading their vessels beyond established limits due to an outdated restriction. It would not result in any short-term costs to these small entities. This proposed rule would allow these permit holders to freely upgrade their vessels without being constrained by the length overall, gross registered tonnage, and net tonnage limits currently specified on their permits. In the short-term, it is likely that only a few permit holders will opt to invest in new vessels or vessel upgrades based on past experience with these kinds of requests. Those who invest in new vessels or upgrades in the short-term would potentially face lower transaction costs, since they would not have to potentially search for and acquire permits with higher upgrade capabilities. In addition, new entrants in the fishery would have more options in acquiring permits, since they would not be limited by vessel size. Current permit holders with permits with high length overall, gross registered tonnage, and net tonnage baselines might face slightly lower demand for their permits, and thus reduced value of their permits under this proposed rule because these permits can currently be transferred to more, and larger, vessels than permits with lower baseline specifications. However, since the implementation of Individual Bluefin Quota (IBQ) program under Amendment 7 to the 2006 Consolidated HMS FMP, much of the economic value of the swordfish directed and Atlantic tunas Longline category permit value has shifted from these permits to the actual IBQ shares bundled with those permits, because IBQ allocation is now required to fish with pelagic longline gear. Therefore, the likely economic impact on permit values of this proposed rule to remove vessel upgrade restrictions is likely very limited. In the long-term, removing the upgrading restrictions would allow greater flexibility for permit holders to upgrade their vessels and address safety issues. The removal of upgrading restrictions is not expected to result in disproportionate adverse effects on pelagic longline fishing operations of different sizes, and is actually likely to help smaller vessel owners slightly more than owners of larger vessels because they are more likely to have lower vessel upgrade limits associated with their permits. Overall, this proposed rule would likely only result in some minor positive impacts on small entity profitability.

This action is not expected to result in a significant economic impact on the small entities currently subject to the vessel upgrading restrictions. Although limited in scope, this action would ease a barrier to entry in the pelagic longline fishery, facilitate limited access permit transfers, provide increased business flexibility, and help vessel owners address safety issues. Therefore, removing vessel upgrading restrictions for vessels issued swordfish directed and Atlantic tunas Longline category LAPs will not have a significant impact on a substantial number of small entities. As a result, no initial regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 21, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, NMFS proposes to amend 50 CFR part 635 as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.4, revise paragraphs (l)(2)(i), (l)(2)(ii) introductory text, (l)(2)(ii)(B), and (l)(2)(ii)(C) to read as follows:

§ 635.4 Permits and fees.

* * * * *

(l) * * *

(2) * * *

(i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (l)(2)(ii) of this section, as applicable, and to the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner may transfer a shark or swordfish LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear LAPs for swordfish may be transferred to another vessel or to another person but only for use with handgear and subject to the upgrading restrictions in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section. Shark directed and incidental LAPs, swordfish directed and incidental LAPs, and Atlantic Tunas Longline category permits are not subject to the upgrading requirements specified in paragraph (l)(2)(ii) of this section. Shark and swordfish incidental LAPs are not subject to the ownership requirements specified in paragraph (l)(2)(iii) of this section.

(ii) An owner may upgrade a vessel with a swordfish handgear LAP, or transfer such permit to another vessel or to another person, and be eligible to retain or renew such permit only if the upgrade or transfer does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications.

* * * * *

(B) Subsequent to the issuance of a swordfish handgear limited access permit, the vessel's horsepower may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the baseline specifications of the vessel initially issued the LAP.

(C) Subsequent to the issuance of a swordfish handgear limited access permit, the vessel's length overall, gross registered tonnage, and net tonnage may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. An increase in any of these three specifications of vessel size may not exceed 10 percent of the baseline specifications of the vessel initially issued the LAP. This type of upgrade may be done separately from an engine horsepower upgrade.

* * * * *

[FR Doc. 2016–17646 Filed 7–25–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 143
Tuesday, July 26, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–SC–16–0020; SC16–930–2]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intent to request an extension for and revision to a currently approved information collection for Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, pursuant to Marketing Order No. 930.

DATES: Comments on this notice must be received by September 26, 2016.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *www.regulations.gov.* All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Andrew Hatch, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone: (202) 720–6862, Fax: (202) 720–8938, or Email: *andrew.hatch@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Marketing Order No. 930 (7 CFR part 930).

OMB Number: 0581–0177.

Expiration Date of Approval: December 31, 2016.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables, and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Marketing order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Marketing orders are authorized under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674). The Secretary of Agriculture oversees these operations and issues regulations recommended by a committee of representatives from the respective commodity industry.

The information collection requirements in this request are essential to carry out the intent of the AMAA and to administer the program, which has operated since 1996.

The Federal marketing order for tart cherries (7 CFR part 930) regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The marketing order authorizes volume regulations that provide for a reserve pool in times of heavy cherry supplies. The marketing order also provides for minimum grade and size regulations, and market research and development projects, including paid advertising. These provisions are not currently in use.

The marketing order, and rules and regulations issued thereunder, authorizes the Cherry Industry Administrative Board (Board), the agency responsible for local administration of the order, to require handlers and growers to submit certain information. Much of this information is compiled in aggregate and provided to the Board to assist in carrying out marketing decisions.

The Board has developed 11 forms as a means for persons to file the required and minimum necessary reports with the Board, such as tart cherry inventories, shipments, diversions, and background data. All the information provided is needed to effectively carry out the requirements of the marketing order and fulfill the intent of the AMAA as expressed in the marketing order. Since this order regulates canned and frozen forms of tart cherries, reporting requirements will be in effect all year.

Nine U.S. Department of Agriculture (USDA) forms are also included in this request. Tart cherry growers and handlers nominated by their peers to serve as representatives on the Board must submit nomination forms to the USDA. Formal rulemaking amendments to the marketing order must be approved in grower referenda authorized and conducted by the USDA. In addition, USDA may conduct a referendum to determine industry support for continuation of the marketing order. Finally, handlers are asked to sign an agreement to indicate their willingness to comply with the provisions of the marketing order if the order is amended.

The information collected is used only by authorized representatives of the USDA, including AMS, Specialty Crops Programs' regional and headquarters staff, and authorized Board employees. Authorized Board employees and the industry are the primary users of the information, and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .227 hours per response.

Respondents: Tart cherry growers and for-profit businesses handling fresh and processed tart cherries produced in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

Estimated Number of Respondents: 642.

Estimated Number of Responses: 3,270.

Estimated Number of Responses per Respondent: 5.09.

Estimated Total Annual Burden on Respondents: 741 hours.

Comments: Comments are invited on: (1) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference this docket number and the appropriate marketing order and be sent to the USDA in care of the Docket Clerk at the address above. All comments received within the provided comment period will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

AMS is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A 60-day comment period is provided to allow interested persons to respond to the notice.

Dated: July 21, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–17702 Filed 7–25–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0021]

National Wildlife Services Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the National Wildlife Services Advisory Committee.

DATES: The meeting will be held on August 2, 3, and 4, 2016, from 8 a.m. to 5 p.m. each day. On August 2, 2016, the Committee will participate in an off-site activity to observe local Wildlife Services field projects. The Committee's business meeting will take place August 3 and 4, 2016.

ADDRESSES: The meeting will be held at the Holiday Inn Express located at 2102 South C Street, Tacoma, WA 98402.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Joyce, Designated Federal Officer, Wildlife Services, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737; (301) 851–3999.

SUPPLEMENTARY INFORMATION: The National Wildlife Services Advisory Committee (the Committee) advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Wildlife Services (WS) program. The Committee also serves as a public forum enabling those affected by the WS program to have a voice in the program's policies.

The meeting will focus on operational and research activities. The Committee will discuss WS efforts to increase operational capacity through prioritizing research objectives. Additionally, the Committee will discuss pertinent national programs and how to increase their effectiveness, as well as ensuring WS remains an active participant in the goal of agricultural protection.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the discussions during the meeting. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Written statements may also be filed at the meeting. Please refer to Docket No. APHIS–2016–0021 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 20th day of July 2016.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–17627 Filed 7–25–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Submission for OMB Review; Comment Request

July 21, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by August 25, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Youth Conservation Corps Application & Medical History Forms.

OMB Control Number: 0596–0084.

Summary of Collection: The Youth Conservation Corps Act of 1970, as amended (Pub. L. 93–408), and 16 U.S.C. 1701–1706, Chapter 37, Youth Conservation Corps and Public Lands Corps, authorizes the USDA Forest Service (FS) and Department of the Interior agencies Fish and Wildlife Service and National Park Service to collect information on applications and medical history forms to evaluate the eligibility of youths 15 to 18 years old for employment with the Youth Conservation Corps (YCC). FS and the Department of Interior cooperate to provide seasonal employment for eligible youth and in doing so prepare the young adults of this country for the ultimate responsibility of maintaining and managing these resources for the American people.

Need and Use of the Information: Youth, ages 15–18, who seek training and employment with participating agencies through the YCC must complete an application form (FS–1800–18) and once selected for employment must complete a medical history form (FS–1800–3). The applicant's parents or guardian must sign both forms. The application form is used in the random selection process and the medical history form provides information needed to determine certification of suitability, any special medical or medication needs, and a file record for the Federal Government and participants. If these forms were not used, the Federal government's ability to oversee the Youth Conservation Corps program would be greatly impaired. The organizational and liability issues that would result from inability to collect this information needed to manage the program would be virtually insurmountable.

Description of Respondents: Individuals or households.

Number of Respondents: 8,500.

Frequency of Responses: Annually.

Total Burden Hours: 4,360.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–17610 Filed 7–25–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Submission for OMB Review; Comment Request

July 21, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 25, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 3570 Community Facilities Technical Assistance and Training Grant Program.

OMB Control Number: 0575–0198.

Summary of Collection: The Community Facilities Technical Assistance and Training (TAT) is a competitive grant program which the Rural Housing Service (RHS) administers. Section 306 of the Consolidated Farm and Rural Development Act (CONACT), 7 U.S.C. 1926, was amended by Section 6006 of the Agriculture Act of 2014 (Pub. L. 113–79) to establish the Community Facilities Technical Assistance and Training Grant. Section 6006 authorized grants be made to public bodies and private nonprofit corporations (including Indian Tribes) that will serve rural areas for the purpose of enabling the grantees to provide to associations technical assistance and training with respect to essential community facilities authorized under Section 306(a)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)). Grants can be made for 100 percent of the cost of assistance.

Need and Use of the Information: Eligible entities receive TAT grants to help small rural communities or areas identify and solve problems relating to essential community facilities. The grant recipients may provide technical assistance to public bodies and private nonprofit corporations. Applicants applying for TAT grants must submit an application, which includes an application form, narrative proposal, various other forms, certifications, and supplemental information. The Rural Development State Offices and the RHS National Office staff will use the information collected to determine applicant eligibility, project feasibility, and the applicant's ability to meet the grant and regulatory requirements. Failure to collect proper information could result in improper determinations of eligibility or improper use of funds.

Description of Respondents: Not-for-Profit Institutions.

Number of Respondents: 70.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 2,184.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–17606 Filed 7–25–16; 8:45 am]

BILLING CODE 3410–XV–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket No. ATBCB–2016–0001]

RIN 3014–0012

Proposed Renewal of Information Collection; OMB Control Number 3014–0012, Online Architectural Barriers Act (ABA) Complaint Form

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice and request for comments.

SUMMARY: We, the Architectural and Transportation Barriers Compliance Board (Access Board), plan to request that the Office of Management and Budget (OMB) renew its approval for the information collection described below, namely our Online Architectural Barriers Act Complaint Form—Office of Management and Budget (OMB) Control Number 3014–0012. In compliance with the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other federal agencies to comment on this information collection. The information collection is scheduled to expire on July 31, 2016, and we propose to continue using the instrument for an additional three years.

DATES: Consideration will be given to all comments received by September 26, 2016.

ADDRESSES: Submit comments by any of the following methods:

- Federal eRulemaking Portal *http://www.regulations.gov*. Follow the instructions for submitting comments. *Regulations.gov* ID for this docket is ATBCB–2016–0001.
- *Email: damiani@access-board.gov.* Include docket number ATBCB–2016–0001 in the subject line of the message.
- *Fax:* 202–272–0081.
- *Mail or Hand Delivery/Courier:* Mario Damiani, Office of the General Counsel, U.S. Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111.

All comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov* and will be available for public viewing.

FOR FURTHER INFORMATION CONTACT: Mario Damiani, Office of the General Counsel, U.S. Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone number: 202–272–0050 (voice); 202–272–0064 (TTY); 202–272–0081 (Fax). Electronic mail address: *damiani@access-board.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Online Architectural Barriers Act (ABA) Complaint Form

OMB Control Number: 3014–0012

Type of Request: Renewal of information collection.

Abstract: The Architectural and Transportation Barriers Compliance Board (Access Board) is seeking to renew its information collection for its Online Architectural Barriers Act (ABA) Complaint Form. The instrument allows complainants to submit a complaint online using a standardized web-based complaint form, which prompts them to provide their allegations and other pertinent data necessary for the Access Board to investigate their ABA complaint. The form is user-friendly and accessible, and allows for greater efficiency, clarity, and timeliness in the complaint filing process.

Use of the Information

The Access Board enforces the ABA by investigating complaints submitted by members of the public concerning particular buildings or facilities designed, altered, or built, by or on behalf of, or leased by, federal agencies, or financed by federal funds. Over 90 percent of complaints the Access Board receives each year are submitted using the Online Complaint Form; the remainder are submitted in writing, without the need for using a hard-copy complaint form, by email, mail, or fax. The online form allows complaints to be filed 24 hours per day, seven days per week. Once complaints are filed, Access Board Compliance Specialists are assigned to investigate each complaint.

As noted above, the Online Complaint Form prompts complainants to provide the information the Compliance Specialists need in order to investigate the complaint. First, complainants must complete the form fields for the name and address of the building or facility. Second, complainants must describe each barrier to accessibility they have found at the building or facility. Third, complainants are prompted to provide personal information, including their name, address, telephone number(s), and email address; this information is entirely optional, as complaints can be submitted anonymously. Where provided, personal information is not disclosed outside the agency without written permission of the complainant. Complainants also have the option to attach electronic files containing pictures, drawings, or other relevant documents to the online complaint form when it is filed. Once any additional information and the complaint is submitted, the system provides complainants confirmation that their complaint has been submitted successfully, together with a complaint number for them to use when making inquiries about the status of their complaint.

We note that use of the online complaint form has greatly improved the completeness of the information included in complaints that are submitted for investigation, and that this in turn has expedited the processing of complaints.

Estimate of Burden

Public reporting burden for this collection of information is estimated to average less than 30 minutes to complete the online complaint form, depending on the number of alleged barriers the complainant identifies.

There is no financial burden on the complainant. Use of the online form relieves much of the burden that the prior practice of using a paper complaint form put on complainants by making it clear which information is required and which is optional, and by essentially walking complainants through the process step-by-step. As noted above, over 90 percent of all ABA complaints are submitted using the online form, but the Access Board continues to accept complaints submitted by email, mail, or fax for complainants who prefer or need to use those filing methods.

Respondents

Individuals. Approximately 200 individuals file ABA complaints with the Access Board each year.

Estimated Number of Responses

Assuming all complainants choose to file complaints using the on-line complaint form, approximately 200 individuals would use the on-line complaint form annually.

Frequency of Responses

Complainants need only submit one online form for each building or facility at which they have found accessibility barriers, regardless of the number of barriers they find. Most complainants file only one ABA complaint. Complainants will need to submit a separate form for each additional building or facility at which they have found an accessibility barrier.

Estimated Total Annual Burden on Respondents

Approximately 30 minutes per respondent total time is all that will be needed to complete the online complaint form, for a total of 100 hours annually. Again, there is no financial burden on complainants.

Comments Requested

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the estimated burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information from respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond.

David M. Capozzi,

Executive Director.

[FR Doc. 2016–17516 Filed 7–25–16; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission telephonic business meeting.

DATES: *Date and Time:* Friday, July 29, 2016, at 1:00 p.m. EST.

ADDRESSES: Meeting to take place by telephone.

FOR FURTHER INFORMATION CONTACT: Brian Walch, Public Affairs Specialist at (202) 376–8371 or *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This business meeting is open to the public. This meeting is open to the public by telephone only. If you would like to call-in please contact Brian Walch via telephone or email at (202) 376–8371 or *publicaffairs@usccr.gov* for the call-in information.

Persons with hearing impairments, please contact the above for how to access the Federal Relay Service for the meeting.

Meeting Agenda

I. Approval of Agenda

II. Program Planning

- Discussion and vote on finding and recommendations for FY2016 Statutory Enforcement Report
- Discussion and vote on concept paper for FY2017 Statutory Enforcement Report

V. Adjourn Meeting

Dated: July 21, 2016.

David Mussatt,

Regional Programs Unit Chief, U.S. Commission on Civil Rights.

[FR Doc. 2016–17683 Filed 7–22–16; 11:15 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee; Correction

AGENCY: Commission on Civil Rights.

ACTION: Notice; correction.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** of June 15, 2016, concerning a meeting of the West Virginia Advisory Committee. The notice advised that the August 23, 2016 planning meeting will be conducted via telephone conference. In addition to listening to the discussion by calling a toll-free number, interested members of the public may attend the meeting in-person.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, (202) 376–7533.

Additional Details of the August 23, 2016 Planning Meeting

In the **Federal Register** of June 15, 2016, in FR Doc. 2016–14128, on page 39022, add the following new paragraph after paragraph three, which ends with the conference call ID number. The new paragraph to read:

Interested members of the public may also attend the Tuesday, August 23, 2016 meeting in-person at the following address: Kanawha County Clerk's Office—Voter Registration Room, 1st Floor, 415 Quarrier Street, Charleston, WV 25301. The meeting convenes at 12:00 p.m. (EDT).

Dated: July 21, 2016.

David Mussatt,

Chief, Regional Programs Coordination Unit.

[FR Doc. 2016–17623 Filed 7–25–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee: Notice of Open Meeting

The Materials Technical Advisory Committee will meet on August 10, 2016, 10:00 a.m., via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session:

1. Opening Remarks and Introduction.
2. Remarks from BIS senior management.
3. Report from working groups: Composite Working Group, Biological Working Group, Pump and Valves Working Group.
4. Report on regime-based activities.
5. Public Comments and New Business.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than August 3, 2016.

To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

For more information, call Yvette Springer at (202) 482–2813.

Dated: July 21, 2016.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2016–17695 Filed 7–25–16; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee: Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on August 9, 2016, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Open Session

1. Opening remarks and introductions.
2. Presentation of papers and comments by the Public.

3. Discussions on results from last, and proposals from last Wassenaar meeting.

4. Report on proposed and recently issued changes to the Export Administration Regulations.

5. Other business.

Closed Session

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than August 2, 2016.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 11, 2016, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with matters the premature disclosure of which would be likely to frustrate significantly implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public. For more information, call Yvette Springer at (202) 482–2813.

Dated: July 21, 2016.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2016–17694 Filed 7–25–16; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–033]

Large Residential Washers From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that large residential washers (LRWs) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2015, through September 30, 2015. The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective July 26, 2016.

FOR FURTHER INFORMATION CONTACT: Brian Smith or David Goldberger, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on January 12, 2016.[1] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum that is dated concurrently with and hereby adopted by this notice.[2] The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Department's Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical.

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary determination is July 19, 2016.[3]

Scope of the Investigation

The products covered by this investigation are LRWs. For a full description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix I of this notice.

Scope Comments

In accordance with the *Preamble* to the Department's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation, as it appeared in the *Initiation Notice.* After consideration of these comments, we preliminarily determined not to amend the scope as published in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record, and an accompanying discussion and analysis of all comments timely received, *see* the Department's Scope Memorandum issued concurrently with this notice.[6]

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[1] *See Large Residential Washers From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 81 FR 1398 (January 12, 2016) (*Initiation Notice*).

[2] *See* Memorandum entitled "Decision Memorandum for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Large Residential Washers from the People's Republic of China" (Preliminary Decision Memorandum).

[3] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas" (January 27, 2016).

[4] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 80 FR at 73716.

[6] *See* Memorandum entitled "Scope Issues for the Preliminary Determination of the Less-Than-Fair-Value (LTFV) Investigation of Large Residential Washers (LRWs) from the People's Republic of China," dated concurrently with this notice (Scope Memorandum).

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. We calculated constructed export prices in accordance with section 772 of the Act. Because the PRC is a non-market economy, within the meaning of section 771(18) of the Act, we calculated normal value (NV) in accordance with section 773(c) of the Act. For a full discussion of the Department's methodology, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Negative Determination of Critical Circumstances, in Part

On May 6, 2016, Whirlpool Corporation (the petitioner) timely filed an allegation of critical circumstances, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(1), alleging that critical circumstances exist with respect to imports of the merchandise under consideration. We preliminarily determine that critical circumstances do not exist for Nanjing LG-Panda Appliances Co., Ltd., but do exist with respect to Suzhou Samsung Electronics Co., Ltd./Suzhou Samsung Electronics Co. Ltd—Export (collectively, Samsung) and the PRC-wide entity. For a full description of the methodology and results of our analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist during the period April 1, 2015, through September 30, 2015:

Exporter	Producer	Weighted-average margin (%)
Nanjing LG-Panda Appliances Co., Ltd./LG Electronics, Inc	Nanjing LG-Panda Appliances Co., Ltd	49.88
Suzhou Samsung Electronics Co., Ltd./Suzhou Samsung Electronics Co. Ltd—Export/Samsung Electronics Co., Ltd.	Suzhou Samsung Electronics Co., Ltd./Suzhou Samsung Electronics Co. Ltd—Export.	111.09
PRC-Wide Entity		80.49

PRC-Wide Rate

In calculating rates for non-individually investigated respondents in the context of non-market economy cases, the Department looks to section 735(c)(5)(A)–(B) of the Act, which provides instructions for calculating the all-others rate in an investigation.[7] Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be equivalent to the weighted average of the estimated weighted-average dumping margins calculated for exporters and producers individually investigated, excluding any margins that are zero, *de minimis,* or based entirely on facts available. Section 735(c)(5)(B) of the Act provides that where all individually investigated exporters or producers receive rates that are zero, *de minimis,* or based entirely on facts available, then the Department may use "any reasonable method" to establish the all-others rate for those companies not individually investigated.

Apart from the mandatory respondents in this investigation, no other PRC exporters of the subject merchandise during the POI established entitlement to a separate rate.[8] Thus, no non-individually examined separate rates are being assigned in this segment. Moreover, the PRC-wide entity is not being individually examined in this investigation. Furthermore, there currently exist no respondents that have failed to cooperate in this investigation, and there are no zero or *de minimis* margins. Therefore, we are preliminarily determining the PRC-wide rate based on a simple average of the calculated rates determined for the mandatory respondents,[9] in accordance with section 735(c)(5)(A) of the Act.[10]

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of LRWs from the PRC, as described in the "Scope of the Investigation" section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. We preliminarily find that critical circumstances exist for imports of LRWs from the PRC produced and/or exported by Samsung and the PRC-wide entity. Accordingly, for Samsung and the PRC-wide entity, in accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit[11] equal to the weighted-average amount by which NV exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combinations listed in the table above will be the rate identified in the table; (2) for all combinations of PRC exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate established for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension of liquidation instructions will remain in effect until further notice.

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[7] *See Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 78 FR 33351 (June 4, 2013), and accompanying Issues and Decision Memorandum at page 4–5.

[8] *See* Preliminary Decision Memorandum.

[9] With two respondents, we would normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We would compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). In this case, however, we do not have complete publicly-ranged quantities from either respondent on the record to properly conduct this comparison. Therefore, we are using a simple average of the dumping margins calculated for the mandatory respondents as the PRC-wide rate for this preliminary determination, and we intend to ask the respondents to provide a complete, publicly-ranged summary of their U.S. sales quantities for consideration in the final determination.

[10] *See Welded Stainless Pressure Pipe From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value,* 79 FR 31092–93 (May 30, 2014); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania,* 65 FR 39125, 39127 (June 23, 2000).

[11] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the preliminary determination in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[13] Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination by the Department, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination by the Department, a request for such postponement is made by the petitioner. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On June 27 and 29, 2016, pursuant to 19 CFR 351.210(b)(2)(ii), LG and Samsung, respectively, requested that the Department postpone its final determination, and extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[14]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our affirmative preliminary determination of sales at LTFV. Because the preliminary determination in this investigation is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of LRWs from the PRC before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of publication of this preliminary determination, as discussed above, the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: July 19, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Postponement of Final Determination and Extension of Provisional Measures
5. Scope Comments
6. Scope of the Investigation
7. Product Characteristics
8. Critical Circumstances
9. Discussion of the Methodology
    a. Non-Market Economy Country
    b. Surrogate Country
    c. Surrogate Value Comments
    d. Separate Rates
    e. Combination Rates
    f. The PRC-Wide Entity
    g. Date of Sale
    h. Fair Value Comparisons
    i. U.S. Price
    j. Normal Value
    k. Factor Valuation Methodology
    l. Currency Conversion
10. Verification
11. International Trade Commission Notification
12. Conclusion

Appendix I: Scope of the Investigation

The products covered by this investigation are all large residential washers and certain parts thereof from the People's Republic of China.

For purposes of this investigation, the term "large residential washers" denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm), except as noted below.

Also covered are certain parts used in large residential washers, namely: (1) All cabinets, or portions thereof, designed for use in large residential washers; (2) all assembled tubs[15] designed for use in large residential washers which incorporate, at a minimum: (a) A tub;

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[12] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.210(e).

[15] A "tub" is the part of the washer designed to hold water.

and (b) a seal; (3) all assembled baskets [16] designed for use in large residential washers which incorporate, at a minimum: (a) A side wrapper; [17] (b) a base; and (c) a drive hub; [18] and (4) any combination of the foregoing parts or subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term "stacked washer-dryers" denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term "commercial washer" denotes an automatic clothes washing machine designed for the "pay per use" segment meeting either of the following two definitions:

(1) (a) It contains payment system electronics; [19] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners; [20] or

(2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,[21] the unit cannot begin a wash cycle without first receiving a signal from a bona fide payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines that meet all of the following conditions: (1) Have a vertical rotational axis; (2) are top loading; [22] (3) have a drive train consisting, *inter alia,* of (a) a permanent split capacitor (PSC) motor,[23] (b) a belt drive,[24] and (c) a flat wrap spring clutch.[25]

Also excluded from the scope are automatic clothes washing machines that meet all of the following conditions: (1) Have a horizontal rotational axis; (2) are front loading; [26] and (3) have a drive train consisting, *inter alia,* of (a) a controlled induction motor (CIM),[27] and (b) a belt drive.

Also excluded from the scope are automatic clothes washing machines that meet all of the following conditions: (1) Have a horizontal rotational axis; (2) are front loading; and (3) have cabinet width (measured from its widest point) of more than 28.5 inches (72.39 cm).

The products subject to this investigation are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

[FR Doc. 2016–17680 Filed 7–25–16; 8:45 am]

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[16] A "basket" (sometimes referred to as a "drum") is the part of the washer designed to hold clothing or other fabrics.

[17] A "side wrapper" is the cylindrical part of the basket that actually holds the clothing or other fabrics.

[18] A "drive hub" is the hub at the center of the base that bears the load from the motor.

[19] "Payment system electronics" denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

[20] A "security fastener" is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a "center pin reject" feature to prevent standard Allen wrenches or Torx drivers from working.

[21] "Normal operation" refers to the operating mode(s) available to end users (*i.e.,* not a mode designed for testing or repair by a technician).

[22] "Top loading" means that access to the basket is from the top of the washer.

[23] A "PSC motor" is an asynchronous, alternating current (AC), single phase induction motor that employs split phase capacitor technology.

[24] A "belt drive" refers to a drive system that includes a belt and pulleys.

[25] A "flat wrap spring clutch" is a flat metal spring that, when engaged, links abutted cylindrical pieces on the input shaft with the end of the concentric output shaft that connects to the drive hub.

[26] "Front loading" means that access to the basket is from the front of the washer.

[27] A "controlled induction motor" is an asynchronous, alternating current (AC), polyphase induction motor.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE758

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad hoc Sacramento River Winter Chinook Workgroup (SRWCW) will hold a meeting, which is open to the public, to discuss progress on development of potential harvest control rule options.

DATES: The meeting will begin at 1 p.m. on Tuesday, August 16, 2016, and end at 5 p.m. on Wednesday, August 17, 2016, or until business for the day is completed.

ADDRESSES: The meeting will be held at the National Marine Fisheries Service, Southwest Fisheries Science Center, Large Conference Room, 110 Shaffer Road, Santa Cruz, CA 95060.

Council address: Pacific Council, 7700 NE Ambassador Place, Suite 101, Portland, Oregon 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Pacific Council, 503–820–2414.

SUPPLEMENTARY INFORMATION:

Agenda

The SRWCW will discuss progress on the development of new predictors of Sacramento River winter Chinook abundance, the development of alternative harvest control rules, and methods for evaluating the performance of alternative control rules. The SRWCW will also prepare a report for the Council's September 2016 meeting and discuss future meeting plans.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, at 503–820–2280, extension 425, at least five days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 20, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–17536 Filed 7–25–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE760

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Data Scoping Webinar for South Atlantic Red Grouper

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 53 Data Scoping Webinar.

SUMMARY: The SEDAR 53 assessment of the South Atlantic stock of *red grouper* will consist of a series Webinars.

DATES: The SEDAR 53 Data Scoping Webinar will be held on Wednesday, August 17, 2016, from 9 a.m. to 11 a.m., to view the agenda, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The Webinar is open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see Contact Information below) to request an invitation providing Webinar access information. Please request Webinar invitations at least 24 hours in advance of each Webinar.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405 or on their Web site, at *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone (843) 571–4366 or email at *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION:

Agenda

The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. The product of the SEDAR Webinar series will be a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Data Scoping webinar are as follows:

1. Participants will identify who will be providing updated and/or new datasets.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least ten business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 21, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–17647 Filed 7–25–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE671

Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments and information.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for an incidental take authorization to take small numbers of seven species of marine mammals, by harassment, incidental to construction activities associated with the East Span of the San Francisco-Oakland Bay Bridge (SFOBB) in the San Francisco Bay (SFB), California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to CALTRANS to incidentally take, by harassment, small numbers of marine mammals for a period of 1 year.

DATES: Comments and information must be received no later than August 25, 2016.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *itp.guan@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application may be obtained by writing to the address specified above or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for a one-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On March 11, 2016, CALTRANS submitted a request to NMFS for the potential harassment of a small number of marine mammals incidental to the dismantling of the East Span of the original SFOBB in SFB, California, between July 16, 2016, and July 15, 2017. On May 16, 2016, CALTRANS submitted a revision of its IHA application based on NMFS comments. NMFS determined that the IHA application was complete on May 19, 2016. NMFS is proposing to authorize the Level B harassment of Pacific harbor seal, California sea lion, northern elephant seal, northern fur seal, harbor porpoise, gray whale and bottlenose dolphin.

Description of the Specified Activity

Overview

CALTRANS proposes removal of the East Span of the original SFOBB by mechanical dismantling and by use of controlled charges to implode the pier into its open cellular chambers below mudline. Activities associated with dismantling the original East Span potentially may result in incidental take of marine mammals. These activities include vibratory pile driving, vibratory pile extraction/removal, impact pile driving, and the use of highly controlled charges to dismantle the Pier E4 and Pier E5 marine foundations.

A one-year IHA was previously issued to CALTRANS for pile driving/removal and mechanical dismantling activities on July 17, 2015 (80 FR 43710; July 23, 2015), based on activities described on CALTRANS' IHA application dated April 13, 2013. This IHA is valid until July 16, 2016. On September 9, 2015, NMFS issued another IHA to CALTRANS for demolition of Pier E3 of the original SFOBB by highly controlled explosives (80 FR 57584; September 24, 2015). This IHA expired on December 30, 2015. Since the construction activities related with the original SFOBB dismantling will last for another two years, CALTRANS is requesting an IHA that covers take of marine mammals from both pile driving/removal and confined explosion.

Construction activities for the replacement of the SFOBB east span commenced in 2002 and are expected to be completed in 2016 with the completion of the bike/pedestrian path and eastbound on ramp from Yerba Buena Island. The new east span is now open to traffic. On November 10, 2003, NMFS issued the first project-related IHA to CALTRANS, authorizing the take of small numbers of marine mammals incidental to the construction of the SFOBB Project. Over the years, CALTRANS has been issued a total of nine IHAs for the SFOBB Project to date, excluding the application currently under review.

Dates and Duration

The demolition of Piers E4 and E5 through controlled implosion are planned to occur in October, November, or December 2016, and pile driving and pile removal activities may occur at any time of the year. CALTRANS is requesting issuance of an IHA for a period of 1 year. To avoid a gap in IHA coverage, CALTRANS is requesting issuance of a new IHA no later than July 17, 2016. However, NMFS does not consider it feasible to issue an IHA by July 2016, and has notified CALTRANS that an IHA, if issued, would cover the period from August 2016 through August 2017.

Specified Geographic Region

The SFOBB project area is located in the central San Francisco Bay (SFB or Bay), between Yerba Buena Island (YBI) and the city of Oakland. The western limit of the project area is the east portal of the YBI tunnel, located in the city of San Francisco. The eastern limit of the project area is located approximately 1,312 ft (400 m) west of the Bay Bridge toll plaza, where the new and former spans connect with land at the Oakland Touchdown in the city of Oakland.

Detailed Description of CALTRANS East Span Removal Project

1. Vibratory and Impact Driving of Temporary Piles

CALTRANS anticipates temporary access trestles, in-water falsework, and cofferdams may be required to dismantle the existing bridge. Temporary access trestles, supported by temporary marine piles, and cofferdams may be needed to provide construction access. Temporary falsework supports will be necessary to provide stability for the portions of the structure not yet removed. Marine pile-supported falsework is anticipated to be necessary to facilitate removal of the superstructure. These temporary structures will be contractor-designed; therefore, their exact nature (*e.g.,* size, type, number of piles), location, and timing of installation are not known at this point. As discussed in detail in the April 13, 2013 IHA application (79 FR 2421; January 14, 2014), a maximum of 2,540 temporary piles may be installed to support all temporary structures required for bridge dismantling.

CALTRANS estimates that a maximum of 200 temporary piles may be installed during the 1-year period of IHA coverage. Types of temporary piles to be installed may include sheet piles, 14-in (0.34-m) H-piles, and steel pipe piles, equal to or less than 36-in (0.91-m) in diameter. A maximum of 132 days of pile driving may be required to install and/or remove piles during the 1-year period of IHA coverage.

All H-piles would be installed with an impact hammer, without the use of a marine pile driving energy attenuator. Impact driving (with the exception of pile proofing) will be restricted to June 1 through November 30, to avoid the peak migration period for salmonids and spawning adult green sturgeon. Vibratory driving and proofing of piles may be performed year-round.

All pipe piles will be installed with a vibratory hammer. The vibratory hammer will be used to drive the majority of the total pile lengths. The remaining piles may be impact-driven with the use of a marine pile-driving energy attenuator (*i.e.,* air bubble curtain system), or other equally effective sound attenuation method (*e.g.,* dewatered cofferdam). A maximum of 20 piles may be impact-driven per day.

In the event a pipe pile is installed entirely with a vibratory hammer, it still will be subject to final "proofing" with an impact hammer. "Proofing" will be accomplished by using a limited number of blows with an impact hammer, intended to test integrity and seating of the pile. A maximum of 10% of the piles installed completely with a vibratory hammer may be proofed with an impact hammer, without the use of a marine pile-driving energy attenuator. Proofing of piles will be limited to a maximum of two piles per day, for less than 1 minute per pile, administering a maximum of 20 blows per pile.

In addition to the temporary pipe piles and H-piles described above, sheet piles may be driven with a vibratory hammer to construct temporary cofferdams or other types of barriers. A cofferdam is a temporary enclosure, built within a body of water, usually composed of sheet piles welded together. The enclosures generally are watertight, allowing them to be fully or partially dewatered for construction access in the marine environment. Partially or un-dewatered cofferdams also may be used to isolate work areas; preventing water temporarily affected by construction activities from mixing with the surrounding waters of the Bay.

When no longer needed, all temporary piles will be retrieved or cut off 1.5 ft (0.46 m) below the mudline, in compliance with United States Coast Guard requirements. A vibratory pile extractor will be used to retrieve piles.

2. Removal of Piers E4 and E5

CALTRANS proposes the removal of Piers E4 and E5 of the original East Span by use of controlled charges to implode each pier into its open cellular chambers below the mudline. A Blast Attenuation System (BAS) will be used to minimize potential impacts on biological resources in the Bay. Both NMFS and CALTRANS believe that the results from the Pier E3 Demonstration Project support the use of controlled charges as a more expedient method of removal that will cause less environmental impact as compared to approved mechanical methods using a dry (fully dewatered) cofferdam. Piers E4 and E5 of the original East Span are located between the OTD area and YBI, and just south of the SFOBB new East Span. These piers are concrete cellular structures that occupy areas deep below the mudline, within the water column, and above the water line of the Bay.

The use of controlled charges would greatly reduce in-water work periods and shorten the overall duration of marine foundation removal compared with mechanical removal. Because of the similar structures for both Piers E4 and E5, each would be removed following the same five steps:

- Dismantling the fender system and removing the pier cap and concrete pedestals;
- Drilling bore holes into the marine foundation;
- Installing and testing the BAS;
- Installing charges, activating the BAS, and imploding the pier; and
- Managing and removing remaining dismantling debris.

Details of these steps are provided below.

2.1 Dismantling of Pier E4 and Pier E5 Fender Systems and Concrete Caps

Dismantling of the Piers E4 and E5 fender systems and pier caps is expected to start in June 2016. The fender systems include timber, metal framing, and concrete aprons, which will be removed and disposed offsite. The steel piles that support the fender system will be removed and recycled off-site. The support piles either will be vibrated out and removed whole or will be cut off a minimum of 1.5 ft (0.46 m) below the mudline and removed off-site.

Support barges will be used to move hydraulic excavators equipped with hoe rams, shearing attachments, drills, and other equipment, including cutting lances and torches that will be used during the mechanical dismantling. A barge-mounted crane will be used to move equipment onto and off each pier.

The concrete pedestals and pier cap will be removed by mechanical means, using tools including those listed above to break the concrete structure into pieces. Support platforms will be installed to provide a working surface for the excavators to dismantle the upper portion of the piers. All concrete rubble from the mechanical dismantling will be placed into exposed cells of the caisson and will fall below the mudline for disposal.

2.2 Pier E5 Lower-Chamber Pre-Cast Slab Removal

The lower caisson cells of Pier E5 on the east and west face of the lower segment of the pier are covered with pre-cast concrete slabs. To assure that the lower caisson chambers will be open to receive rubble during the controlled implosion of Pier E5, these slabs will be removed mechanically by breaking them with a modified steel pile that will be attached to and controlled by a barge-mounted crane. The controlled drop will bring the pile down on each slab. The weight of the modified pile will cause each concrete slab to shatter and fall into the caisson cells, to be entombed below the mudline.

2.3 Drill Boreholes

After the mechanical dismantling operations are complete, access platforms will be installed on top of each pier to support the drilling equipment. The exposed interior cell walls, buttress walls, and outside walls will be drilled from the top down, to remove concrete and create boreholes to just below the controlled blasting removal limit for each pier. Boreholes that are drilled in areas that are inundated with water (*i.e.,* to the buttress walls and concrete slabs) will be done using a drill bit working within a tubular casing for guidance and to provide containment during in-water work. Monitoring will be performed to minimize and avoid impacts on water quality during this activity.

For Pier E5, an overhanging template system will be installed to guide the drill below the waterline. For Pier E5, divers will be required to cut notches into the buttress walls to guide the drilling of underwater boreholes. Pier E4 does not have buttress walls; therefore, it will not require in-water notching, and all borehole drilling will occur out of the water.

2.4 Blast Attenuation System Installation and Deployment

The BAS that will be used at Piers E4 and E5 is the same system that was successfully used for the Pier E3 Demonstration Project. The BAS is a modular system of pipe manifold frames, placed around each pier and fed by air compressors to create a curtain of air. The BAS will be activated before and during implosion. As shown during the Demonstration Project last year (CALTRANS 2016), the BAS will help minimize noise and pressure waves generated during each controlled blast, to minimize potentially adverse effects on biological resources that may be nearby. Each BAS frame is approximately 50.5 ft (15.4 m) long by 6 ft (1.8 m) wide. The BAS to be used at Piers E4 and E5 will be same system that was used at Pier E3 and will meet the same specifications.

The complete BAS will be installed and tested during the weeks leading up to each controlled blast. Before installing the BAS, CALTRANS will move any existing debris on the Bay floor that may interrupt proper installation of the BAS. Existing debris identified as a risk to proper installation of the BAS will be moved outside the path of the BAS layout. Each BAS frame will be lowered to the bottom of the Bay by a barge-mounted crane and positioned into place. Divers will be used to assist frame placement, and to connect air hoses to the frames. Frames will be situated to contiguously surround the pier. Each frame will be weighted to negative buoyancy for activation. Compressors will provide enough pressure to achieve a minimal air volume fraction of 3 to 4 percent, consistent with the successful use of BAS systems in past controlled blasting activities, including Pier E3 (CALTRANS 2016). System performance is anticipated to provide approximately 80% sound and pressure attenuation, based on the results from the Demonstration Project (CALTRANS 2016).

2.5 Test Blasts

Before each pier implosion, test blasts may be conducted within the completely installed and operating BAS so that the hydroacoustic monitoring equipment will be properly triggered and functional before each pier implosion event. A key requirement of the implosion involves accurately capturing hydroacoustic information from the controlled blast. To accomplish this, a smaller test charge will be used to trigger recording instrumentation. Multiple test blast events may be required to verify proper instrument operation and calibrate the equipment for the implosion event. These same instruments and others of the same type will use high-speed recording devices to capture hydroacoustic data at both near-field and far-field monitoring locations during the implosion.

The BAS will be in operation during all tests. Tests will use a charge weight of approximately 18 grains (0.0025 pound) or less. The test charge will be placed along one of the longer faces of the pier and inside the BAS while it is operating. Results from test blasts that occurred during the Pier E3 Demonstration Project indicate that these test blasts will have minimal impacts on fish and marine mammals (CALTRANS 2016).

2.6 Acoustic Deterrent Devices

Prior to controlled implosion of Pier E4 and E5 CALTRANS will deploy acoustic deterrent devices (ADD) to deter marine mammals from entering exclusion zones. Up to 20 ADDs will be attached to the buoys delineating the pinniped exclusion zone, and to monitoring boats or other bridge piers near Piers E4 or E5.

ADDs are commonly used in commercial fishing and at fish farms to scare marine mammals away from nets or structures (Gordon *et al.*, 2007; Brandt *et al.* 2013; Gotz and Janik 2013; Schakner and Blumstein 2013) and were used for the first time during the Pier E3 implosion to deter marine mammals from entering the exclusion zones. The pulse of ADDs used during the Pier E3 implosion had a frequency of 10 kHz, a source sound level of 132 dB re 1 μPa, with regular or random interpulse intervals of 4 seconds (Airmar Porpoise ADD, Milford, NH). Insufficient data exists to determine the effectiveness of the ADDs during the Pier E3 implosion. NMFS does not consider the ADDs would have take of marine mammals due to their low source level.

2.7 Controlled Implosion of Piers E4 and E5

Before pier removal via controlled blasting, the bore holes in the pier will be loaded with controlled charges. Individual cartridge charges, using electronic blasting caps versus pumpable liquid blasting agents, have been selected to provide greater control and accuracy in determining the individual and total charge weights. Use of individual cartridges will allow a refined blast plan that efficiently breaks concrete while minimizing the amount of charges needed.

Boreholes will vary in diameter and depth, and have been designed to provide optimal efficiency in transferring the energy created by the controlled charges to dismantle the pier. Individual charge weights will vary from 20 to 35 lbs (9 to 16 kg), and the total charge weight for each controlled blast event will be approximately 11,000 to 12,000 lbs (5,000 to 5,500 kg). Charges are arranged in different levels (decks) and will be separated in the boreholes by stemming. Stemming is the insertion of inert materials (*e.g.*, sand or gravel) to insulate and retain charges in an enclosed space. Stemming will allow more efficient transfer of energy into the structural concrete for fracture, and further reduce the release of potential energy into the surrounding water column. The blast events for Piers E4 and E5 will each consist of approximately 400 individual delays of varying charge weight. The entire detonation sequence, consisting of approximately 400 detonations, will last approximately 3 to 4 seconds for each pier; with a minimum delay time of 9 milliseconds (msec) between detonations.

2.8 Debris Removal and Site Restoration

Following the controlled implosion event and confirmation that the area is safe to work in, construction crews will begin to remove all associated equipment, including barges, compressors, the BAS, and blast mats. CALTRANS expects that a small portion of rubble from each pier will fall outside its respective footprint and/or mound within the footprint of each pier, and will need to be managed after each controlled implosion. Concrete rubble resulting from the controlled implosions of Piers E4 and E5 that does not fall into the hollow caisson cells will be placed in the remaining caisson cells to be entombed below the mudline. The portions of each pier that do not break apart during controlled blasting and remain above the removal limits will be demolished by mechanical means. This may require the use of underwater mechanical equipment, including hydraulic crushing or grinding machinery or diver-operated jackhammers.

Rubble from the controlled implosion that does not fall into the hollow caisson cells will be picked up and disposed inside the remaining caisson cells, to be entombed below the mudline. Management of extraneous rubble will be done by a barge-mounted crane with a clam-shell bucket. Buckets used during this debris management phase will be equipped with a Global Positioning System unit, to accurately guide the location of the bucket in the water. The in-water site management operation is expected to take a few weeks following each implosion event and is anticipated to be completed by the end of December 2016.

Description of Marine Mammals in the Area of the Specified Activity

Seven species of marine mammals regularly inhabit or rarely or seasonally enter the San Francisco Bay (Table 1). The two most common species observed are the Pacific harbor seal (*Phoca vitulina richardii*) and the California sea lion (*Zalophus californianus*). Juvenile northern elephant seals (*Mirounga angustirostris*) seasonally enter the Bay (spring and fall), while harbor porpoises (*Phocoena phocoena*) may enter the western side of the Bay throughout the year, but rarely occur near the SFOBB east span. Gray whales (*Eschrichtius robustus*) may enter the Bay during their northward migration in the late winter and spring. In addition, though rare, northern fur seals (*Callorhinus ursinus*) and bottlenose dolphins (*Tursiops truncatus*) have also been sighted in the Bay. None of these species are listed as endangered or threatened under the Endangered Species Act (ESA), or as depleted or a strategic stock under the MMPA.

TABLE 1—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN REGION OF ACTIVITY

Common name	Scientific name	Status	Occurrence	Seasonality	Range	Abundance
Harbor seal	*Phoca vitulina richardii*		Common	Year round	California	30,968
California sea lion	*Zalophus californianus*		Common	Year round	California	296,750
Northern fur seal	*Callorhinus ursinus*		Rare	Year round	California	12,844
Northern elephant seal	*Mirounga angustirostris*		Occasional	Spring & fall	California	179,000
Gray whale	*Eschrichtius robustus*	(*)	Rare	Spring & fall	Mexico to the U.S. Arctic Ocean.	20,990
Harbor porpoise	*Phocoena phocoena*		Rare	Year round	California	9,886
Coastal Bottlenose dolphin	*Tursiops truncatus*		Rare	Year round	California	323

* The E. North Pacific population is not listed under the ESA.

More detailed information on the marine mammal species found in the vicinity of the SFOBB construction site can be found in CALTRANS IHA application, and in NMFS stock assessment report (Caretta *et al.*, 2015), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/sars/pdf/pacific_sars_2014_final_noaa_swfsc_tm_549.pdf.* Refer to these documents for additional information on these species.

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (*e.g.*, pile removal and pile driving) have been observed to impact marine mammals. This discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented, and how either of those will shape the anticipated impacts from this specific activity. The "Estimated Take by Incidental Harassment" section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The "Analysis and Preliminary Determinations" section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the "Estimated Take by Incidental Harassment" section, the "Proposed Mitigation" section, and the "Anticipated Effects on Marine Mammal Habitat" section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data, Southall *et al.* (2007) designate "functional hearing groups" for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 25 kHz;
- Mid-frequency cetaceans (32 species of dolphins, seven species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, seven species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz;
- Phocid pinnipeds in Water: Functional hearing is estimated to occur between approximately 75 Hz and 100 kHz; and
- Otariid pinnipeds in Water: Functional hearing is estimated to occur between approximately 100 Hz and 48 kHz.

As mentioned previously in this document, 7 marine mammal species (three cetacean and four pinniped species) are likely to occur in the vicinity of the proposed SFOBB pile driving/removal and controlled pier detonation area. Of the 2 cetacean species, one belongs to low-frequency cetacean (gray whale), one mid-frequency cetacean (bottlenose dolphin), and one high-frequency cetacean (harbor porpoise). 2 species of pinniped are phocid (Pacific harbor seal and northern elephant seal), and 2 species of pinniped is otariid (California sea lion and northern fur seal). A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

Potential Effects From In-Water Pile Driving and Pile Removal

The proposed CALTRANS SFOBB construction work using in-water pile driving and pile removal could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.*, 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.*, the threshold returns to the pre-exposure value), it is a temporary threshold shift (Southall *et al.*, 2007).

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (*i.e.*, sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.*, there is complete recovery), can occur in specific frequency ranges (*i.e.*, an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.*, 2000, 2002, 2003, 2005, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.*, 2009; Mooney *et al.*, 2009a, 2009b; Popov *et al.*, 2011a, 2011b; Kastelein *et al.*, 2012a; Schlundt *et al.*, 2000; Nachtigall *et al.*, 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.*, 1999, 2005; Kastelein *et al.*, 2012b).

Lucke *et al.* (2009) found a threshold shift (TS) of a harbor porpoise after exposing it to airgun noise with a received sound pressure level (SPL) at 200.2 dB (peak-to-peak) re: 1 μPa, which corresponds to a sound exposure level of 164.5 dB re: 1 μPa^2 s after integrating exposure. NMFS currently uses the root-mean-square (rms) of received SPL at 180 dB and 190 dB re: 1 μPa as the threshold above which permanent threshold shift (PTS) could occur for cetaceans and pinnipeds, respectively. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of rms SPL from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley, *et al.*, 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.* (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. This is still above NMFS' current 180 dB rms re: 1 μPa threshold for injury. However, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran & Schlundt, 2010; Finneran *et al.*, 2002; Kastelein and Jennings, 2012).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.*, 2009). Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from vessels dynamic positioning activity is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.*, Clark *et al.*, 2009) and cause increased stress levels (*e.g.*, Foote *et al.*, 2004; Holt *et al.*, 2009).

Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of sound pressure level) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). For CALTRANS proposed SFOBB construction activities, noises from vibratory pile driving contribute to the elevated ambient noise levels in the project area, thus increasing potential for or severity of masking. Baseline ambient noise levels in the Bay are very high due to ongoing shipping, construction and other activities in the Bay.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.*, 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.*, pinnipeds flushing into water from haulouts or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.*, 2007). Currently NMFS uses a received level of 160 dB re 1 μPa (rms) to predict the onset of behavioral harassment from impulse noises (such as impact pile driving), and 120 dB re 1 μPa (rms) for continuous noises (such as vibratory pile driving). For the CALTRANS

SFOBB construction activities, both of these noise levels are considered for effects analysis because CALTRANS plans to use both impact and vibratory pile driving, as well as vibratory pile removal.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be biologically significant if the change affects growth, survival, and/or reproduction, which depends on the severity, duration, and context of the effects.

Potential Effects From Controlled Pier Implosion

It is expected that an intense impulse from the proposed Piers E4 and E5 controlled implosion would have the potential to impact marine mammals in the vicinity. The majority of impacts would be startle behavioral and temporary behavioral modification from marine mammals. However, a few individuals of animals could be exposed to sound levels that would cause temporal hearing threshold shift (TTS).

The underwater explosion would send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. The shock wave and blast noise are of most concern to marine animals. The effects of an underwater explosion on a marine mammal depends on many factors, including the size, type, and depth of both the animal and the explosive charge; the depth of the water column; and the standoff distance between the charge and the animal, as well as the sound propagation properties of the environment. Potential impacts can range from brief effects (such as behavioral disturbance), tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to death of the animal (Yelverton *et al.,* 1973; DoN, 2001). Non-lethal injury includes slight injury to internal organs and the auditory system; however, delayed lethality can be a result of individual or cumulative sublethal injuries (DoN, 2001). Immediate lethal injury would be a result of massive combined trauma to internal organs as a direct result of proximity to the point of detonation (DoN, 2001). Generally, the higher the level of impulse and pressure level exposure, the more severe the impact to an individual.

Injuries resulting from a shock wave take place at boundaries between tissues of different density. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg 2000). Gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner 1982; Hill 1978; Yelverton *et al.,* 1973). In addition, gas-containing organs including the nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble. Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe gastrointestinal tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.,* 1973).

Because the ears are the most sensitive to pressure, they are the organs most sensitive to injury (Ketten 2000). Sound-related damage associated with blast noise can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If an animal is able to hear a noise, at some level it can damage its hearing by causing decreased sensitivity (Ketten 1995). Sound-related trauma can be lethal or sublethal. Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995).

However, the above discussion concerning underwater explosion only pertains to open water detonation in a free field. CALTRANS' Pier E4 and E5 demolition project using controlled implosion uses a confined detonation method, meaning that the charges would be placed within the structure. Therefore, most energy from the explosive shock wave would be absorbed through the destruction of the structure itself, and would not propagate through the open water. Measurements and modeling from confined underwater detonation for structure removal showed that energy from shock waves and noise impulses were greatly reduced in the water column (Hempen *et al.,* 2007; CALTRANS 2016). Therefore, with monitoring and mitigation measures discussed above, CALTRANS Pier E4 and E5 controlled implosions are not likely to have the injury or mortality effects on marine mammals in the project vicinity. Instead, NMFS considers that CALTRANS' proposed Pier E4 and E5 controlled implosions in the San Francisco Bay are most like to cause Level B behavioral harassment and maybe TTS in a few individuals of marine mammals, as discussed below.

Changes in marine mammal behavior are expected to result from an acute stress response. This expectation is based on the idea that some sort of physiological trigger must exist to change any behavior that is already being performed. The exception to this rule is the case of auditory masking, which is not likely since the CALTRANS' controlled implosion is only two short, sequential detonations that last for approximately 3–4 seconds.

Potential Effects on Marine Mammal Habitat

The removal of the SFOBB East Span is not likely to negatively affect the habitat of marine mammal populations because no permanent loss of habitat will occur, and only a minor, temporary modification of habitat will occur. The original SFOBB area is not used as a haul-out site by pinnipeds or as a major foraging area. Therefore, demolition of the concrete marine foundations and pile installation and removal activities are unlikely to permanently decrease fish populations in the area and are unlikely to affect marine mammal populations.

Project activities will not affect any pinniped haul-out sites or pupping sites. The YBI harbor seal haul-out site is on the opposite site of the island from the SFOBB Project area. Because of the distance and the island blocking the sound, underwater noise and pressure levels from the SFOBB Project will not reach the haul-out. Other haul-out sites for sea lions and harbor seals are at a sufficient distance from the SFOBB Project area that they will not be affected. The closest recognized harbor seal pupping site is at Castro Rocks, approximately 8.7 mi (14 km) from the SFOBB Project area. No sea lion rookeries are found in the Bay.

The addition of underwater sound from SFOBB Project activities to background noise levels can constitute a potential cumulative impact on marine mammals. However, these potential cumulative noise impacts will be short in duration.

SPLs from impact pile driving and pier implosion have the potential to injure or kill fish in the immediate area. During previous pier implosion and pile driving activities, CALTRANS has reported mortality to marine mammals' prey species, including northern anchovies and Pacific herring (CALTRANS 2016). These few isolated fish mortality events are not anticipated to have a substantial effect on prey species population or their availability as a food resource for marine mammals.

Studies also suggest that larger fish are generally less susceptible to death or injury than small fish. Moreover, elongated forms that are round in cross section are less at risk than deep-bodied forms. Orientation of fish relative to the shock wave may also affect the extent of injury. Open water pelagic fish (*e.g.,* mackerel) seem to be less affected than reef fishes. The results of most studies are dependent upon specific biological, environmental, explosive, and data recording factors.

The huge variation in fish populations, including numbers, species, sizes, and orientation and range from the detonation point, makes it very difficult to accurately predict mortalities at any specific site of detonation. Most fish species experience a large number of natural mortalities, especially during early life-stages, and any small level of mortality caused by the CALTRANS' two controlled implosions will likely be insignificant to the population as a whole.

Proposed Mitigation Measures

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

1. Proposed Mitigation Measures for In-water Pile Driving and Pile Removal

For the proposed CALTRANS SFOBB construction activities, CALTRANS worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. The primary purpose of these mitigation measures is to detect marine mammals within or about to enter designated exclusion zones corresponding to NMFS current injury thresholds and to initiate immediate shutdown or power down of the piling hammer, making it very unlikely potential injury or TTS to marine mammals would occur, and to reduce the intensity of Level B behavioral harassment.

Use of Noise Attenuation Devices

To reduce impact on marine mammals, CALTRANS shall use a marine pile driving energy attenuator (*i.e.,* air bubble curtain system), or other equally effective sound attenuation method (*e.g.,* dewatered cofferdam) for all impact pile driving, with the exception of pile proofing and H-piles.

Establishment of Exclusion and Level B Harassment Zones

Before the commencement of in-water construction activities, which include impact pile driving and vibratory pile driving, CALTRANS shall establish "exclusion zones" where received underwater sound pressure levels (SPLs) are higher than 180 dB (rms) and 190 dB (rms) re 1 μPa for cetaceans and pinnipeds, respectively, and "Level B behavioral harassment zones" where received underwater sound pressure levels (SPLs) are higher than 160 dB (rms) and 120 dB (rms) re 1 μPa for impulse noise sources (impact pile driving) and non-impulses noise sources (vibratory pile driving), respectively. Before the sizes of actual zones are determined based on hydroacoustic measurements, CALTRANS shall establish these zones based on prior measurements conducted during SFOBB constructions, as described in Table 2 of this document.

TABLE 2—TEMPORARY EXCLUSION AND LEVEL B HARASSMENT ZONES FOR VARIOUS PILE DRIVING ACTIVITIES

Pile driving/dismantling activities	Pile size (m)	Distance to 120 dB re 1 μPa (rms) (m)	Distance to 160 dB re 1 μPa (rms) (m)	Distance to 180 dB re 1 μPa (rms) (m)	Distance to 190 dB re 1 μPa (rms) (m)
Vibratory Driving	24	2,000	NA	NA	NA
	36	2,000	NA	NA	NA
	Sheet pile	2,000	NA	NA	NA
Attenuated Impact Driving	24	NA	1,000	235	95
	36	NA	1,000	235	95
Unattenuated Proofing	24	NA	1,000	235	95
	36	NA	1,000	235	95
Unattenuated Impact Driving	H-pile	NA	1,000	235	95

Once the underwater acoustic measurements are conducted during initial test pile driving, CALTRANS shall adjust the size of the exclusion zones and Level B behavioral harassment zones, and monitor these zones accordingly.

NMFS-approved protected species observers (PSOs) shall conduct initial survey of the exclusion zones to ensure that no marine mammals are seen within the zones before impact pile driving of a pile segment begins. If marine mammals are found within the exclusion zone, impact pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes for pinnipeds and small cetaceans (harbor porpoise), and harbor porpoise and 30 minutes for bottlenose dolphins and gray whales. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone. This 15-minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994), and the mean diving duration for harbor porpoises ranges from 44 to 103 seconds (Westgate *et al.,* 1995).

If pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and continue to monitor the exclusion zone. Operations may not resume until the marine mammal has exited the exclusion zone.

Soft Start

In order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a higher noise exposure, CALTRANS and its contractor will also "soft start" the hammer prior to operating at full capacity. This should expose fewer animals to loud sounds both underwater and above water. This would also ensure that, although not expected, any pinnipeds and cetaceans that are missed during the initial exclusion zone monitoring will not be injured.

Shut-Down Measure

CALTRANS shall implement shutdown measures if a marine mammal is sighted approaching the Level A exclusion zone. In-water construction activities shall be suspended until the marine mammal is sighted moving away from the exclusion zone, or if a pinniped or harbor porpoise is not sighted for 15 minutes after the shutdown, or if a bottlenose dolphin or gray whale is not sighted for 30 minutes after the shutdown.

2. Proposed Mitigation Measures for Confined Implosion

For CALTRANS's proposed Piers E4 and E5 controlled implosion, CALTRANS worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. The primary purposes of these mitigation measures are to minimize sound levels from the activities, to monitor marine mammals within designated exclusion zones and zones of influence (ZOI). Specific proposed mitigation measures are described below.

Time Restriction

Implosion of Piers E4 and E5 would only be conducted during daylight hours and with enough time for pre and post implosion monitoring, and with good visibility when the largest exclusion zone can be visually monitored.

Installation of Blast Attenuation System (BAS)

Prior to the Piers E4 and E5 demolition, CALTRANS should install a Blast Attenuation System (BAS) as described above to reduce the shockwave from the implosion.

Establishment of Level A Exclusion Zone

Due to the different hearing sensitivities among different taxa of marine mammals, NMFS has established a series of take thresholds from underwater explosions for marine mammals belonging to different functional hearing groups (Table 3). Under these criteria, marine mammals from different taxa will have different impact zones (exclusion zones and zones of influence).

CALTRANS will establish an exclusion zone for both the mortality and Level A harassment zone (permanent hearing threshold shift or PTS, GI track injury, and slight lung injury) using the largest radius estimated harbor and northern elephant seals. CALTRANS will use measured distances to marine mammal threshold distances from the implosion of Pier E3 as predicted distances to the thresholds for the implosions of Piers E4 and E5 (Table 4). The use of measured peak pressure, cumulative SEL, and impulse levels from the Pier E3 implosion provide a conservative estimate for the proposed implosions of Piers E4 and E5. The Piers E4 and E5 caisson structures are smaller than the Pier E3 caisson structure and will require fewer explosive charges to implode. The maximum charge weight for the implosions of Piers E4 and E5 is 35 pounds/delay, the same as used for the implosion of Pier E3. However, the total explosive weight, number of individual detonations, and total time of implosion event will be less for these smaller piers.

TABLE 3—NMFS TAKE THRESHOLDS FOR MARINE MAMMALS FROM UNDERWATER IMPLOSIONS

Group	Species	Level B harassment		Level A harassment	Serious injury		Mortality
		Behavioral	TTS	PTS	Gastro-intestinal tract	Lung	
Mid-freq cetacean.	Bottlenose dolphin.	167 dB SEL ...	172 dB SEL or 224 dB SPL_{pk}.	187 dB SEL or 230 dB SPL_{pk}.	237 dB SPL or 104 psi.	$39.1M^{1/3} (1+[D/10.081])^{1/2}$ Pa-sec. where: M = mass of the animals in kg. D = depth of animal in m	$91.4M^{1/3} (1+[D/10.081])^{1/2}$ Pa-sec. where: M = mass of the animals in kg. D = depth of animal in m.
High-freq cetacean.	Harbor porpoise.	141 dB SEL ...	146 dB SEL or 195 dB SPL_{pk}.	161 dB SEL or 201 dB SPL_{pk}.			
Phocidae	Harbor seal & northern elephant seal.	172 dB SEL ...	177 dB SEL or 212 dB SPL_{pk}.	192 dB SEL or 218 dB SPL_{pk}.			
Otariidae	California sea lion & northern fur seal.	195 dB SEL ...	200 dB SEL or 212 dB_{pk}.	215 dB SEL or 218 dB SPL_{pk}.			

* **Note:** All dB values are referenced to 1 μPa. SPL_{pk} = Peak sound pressure level; psi = pounds per square inch.

TABLE 4—MEASURED DISTANCES TO UNDERWATER BLASTING THRESHOLD CRITERIA FOR LEVELS A AND B HARASSMENT AND MORTALITY FROM THE PIER E3 IMPLOSION

Species	Level B criteria		Level A criteria			Mortality
	Behavioral response	TTS Dual criteria *	PTS Dual criteria *	Gastro-intestinal track	Lung injury	
Harbor Seal	2,460 ft (750 m)	**1,658 ft (505 m)** .... 104 ft (32 m)	**507 ft (155 m)** .... 65 ft (20 m)	<100 ft (30 m)	<100 ft (30 m)	<100 ft (30 m).
California Sea Lion	387 ft (118 m)	**261 ft (80 m)** .... 104 ft (32 m)	**80 ft (24 m)** .... 65 ft (20 m)	<100 ft (30 m)	<100 ft (30 m)	<100 ft (30 m).

TABLE 4—MEASURED DISTANCES TO UNDERWATER BLASTING THRESHOLD CRITERIA FOR LEVELS A AND B HARASSMENT AND MORTALITY FROM THE PIER E3 IMPLOSION—Continued

Species	Level B criteria		Level A criteria			Mortality
	Behavioral response	TTS Dual criteria *	PTS Dual criteria *	Gastro-intestinal track	Lung injury	
Northern Elephant Seal	2,460 ft (750 m)	**1,658 ft (505 m)** 104 ft (32 m)	**507 ft (155 m)** 65 ft (20 m)	<100 ft (30 m)	<100 ft (30 m)	<100 ft (30 m).
Northern fur seal	387 ft (118 m)	**261 ft (80 m)** 104 ft (32 m)	**80 ft (24 m)** 65 ft (20 m)	<100 ft (30 m)	<100 ft (30 m)	<100 ft (30 m).
Harbor Porpoise	8,171 ft (2,491 m)	**5,580 ft 1,701 m)** 400 ft (122 m)	**1,777 ft (542 m)** 249 ft (76 m)	<100 ft (30 m)	<100 ft (30 m)	<100 ft (30 m).
Bottlenose Dolphin	1,255 ft (383 m)	**855 ft (261 m)** 202 ft (62 m)	**271 ft (83 m)** 112 ft (34 m)	<100 ft (30 m)	<100 ft (30 m)	<100 ft (30 m).

Note:
* For the TTS and PTS criteria thresholds with dual criteria, the largest criteria distances (i.e., more conservative) are shown in bold.

Establishment of Level B Temporary Hearing Threshold Shift (TTS) Zone of Influence

As shown in Table 3, for harbor and northern elephant seals, this will cover the area out to 212 dB peak SPL or 177 dB SEL, whichever extends out the furthest. Hydroacoustic modeling indicates this isopleth would extend out to 1,658 ft (505 m) from the pier. For harbor porpoises, this will cover the area out to 195 dB peak SPL or 146 dB SEL, whichever extends out the furthest, to 5,580 ft (1,701 m) from the pier. As discussed previously, the presence of harbor porpoises in this area is unlikely but monitoring will be employed to confirm their absence. For California sea lions, the distance to the Level B TTS zone of influence will cover the area out to 212 dB peak SPL or 200 dB SEL. This distance was calculated at 261 ft (80 m) from Pier E3, well within the exclusion zone previously described. Hearing group specific Level B TTS zone of influence ranges are provided in Table 4.

Establishment of Level B Behavioral Zone of Influence

As shown in Table 3, for harbor seals and northern elephant seals, this will cover the area out to 172 dB SEL. Hydroacoustic measurement indicates this isopleth would extend out to 2,460 ft (750 m) from the pier. For harbor porpoises, this will cover the area out to 141 dB SEL. Hydroacoustic measurement indicates this isopleth would extend out to 8,171 ft (2,941 m) from the pier. As discussed previously, the presence of harbor porpoises in this area is unlikely but monitoring will be employed to confirm their absence. For California sea lions, the distance to the Level B behavioral harassment ZOI will cover the area out to 195 dB SEL. This distance was calculated at 387 ft (118 m) from the pier, well within the exclusion zone previously described. Hearing group specific Level B TTS zone of influence ranges are provided in Table 4.

Communication

All PSOs will be equipped with mobile phones and a VHF radio as a backup. One person will be designated as the Lead PSO and will be in constant contact with the Resident Engineer on site and the blasting crew. The Lead PSO will coordinate marine mammal sightings with the other PSOs. PSOs will contact the other PSOs when a sighting is made within the exclusion zone or near the exclusion zone so that the PSOs within overlapping areas of responsibility can continue to track the animal and the Lead PSO is aware of the animal. If it is within 30 minutes of blasting and an animal has entered the exclusion zone or is near it, the Lead PSO will notify the Resident Engineer and blasting crew. The Lead PSO will keep them informed of the disposition of the animal.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals.
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned.
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of pile driving and pile removal or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(3) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of pile driving and pile removal, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS,

NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an incidental take authorization (ITA) for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. CALTRANS has proposed marine mammal monitoring measures as part of the IHA application. It can be found at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of pile driving that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

(3) An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

(4) An increased knowledge of the affected species; and

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Proposed Monitoring Measures

1. Monitoring for Pile Driving and Pile Removal

(1) Visual Monitoring

Besides using monitoring for implementing mitigation (ensuring exclusion zones are clear of marine mammals before pile driving begins and after shutdown measures), marine mammal monitoring will also be conducted to assess potential impacts from CALTRANS construction activities. CALTRANS will implement onsite marine mammal monitoring for 100% of all unattenuated impact pile driving of H-piles for 180- and 190-dB re 1 μPa exclusion zones and 160-dB re 1 μPa Level B harassment zone and attenuated impact pile driving (except pile proofing) for 180- and 190-dB re 1 μPa exclusion zones. CALTRANS will also monitor 20% of the attenuated impact pile driving for the 160-dB re 1 μPa Level B harassment zone, and 20% of vibratory pile driving for the 120-dB re 1 μPa Level B harassment zone.

(2) Protected Species Observers (PSOs)

Monitoring of the pinniped and cetacean exclusion zones shall be conducted by a minimum of three qualified NMFS-approved PSOs. Observations will be made using high-quality binoculars (*e.g.*, Zeiss, 10 x 42 power). PSOs will be equipped with radios or cell phones for maintaining contact with other observers and CALTRANS engineers, and range finders to determine distance to marine mammals, boats, buoys, and construction equipment.

(3) Data Collection

Data on all observations will be recorded and will include the following information:

- Location of sighting;
- Species;
- Number of individuals;
- Number of calves present;
- Duration of sighting;
- Behavior of marine animals sighted;
- Direction of travel; and
- When in relation to construction activities did the sighting occur (*e.g.*, before, "soft-start", during, or after the pile driving or removal).

1. Monitoring for Confined Implosion of Piers E4 and E5

Monitoring for implosion impacts to marine mammals will be based on the SFOBB pile driving monitoring protocol. Pile driving has been conducted for the SFOBB construction project since 2000 with development of several NMFS-approved marine mammal monitoring plans (CALTRANS 2004; 2013). Most elements of these marine mammal monitoring plans are similar to what would be required for underwater implosions. These monitoring plans would include monitoring an exclusion zone and ZOIs for TTS and behavioral harassment described above.

(1) Protected Species Observers (PSOs)

A minimum of 8–10 PSOs would be required during the Piers E4 and E5 controlled implosion so that the exclusion zone, Level B Harassment TTS and Behavioral ZOIs, and surrounding area can be monitored. One PSO would be designated as the Lead PSO and would receive updates from other PSOs on the presence or absence of marine mammals within the exclusion zone and would notify the Environmental Compliance Manager of a cleared exclusion zone to the implosion.

(2) Monitoring Protocol

Implosions of Piers E4 and E5 will be conducted only during daylight hours and with enough time for pre and post-implosion monitoring, and with good weather (*i.e.*, clear skies and no high winds). This work will be completed so that PSOs will be able to detect marine mammals within the exclusion zones and beyond. The Lead PSO will be in contact with other PSOs. If any marine mammals enter an exclusion zone within 30 minutes of blasting, the Lead PSO will notify the Environmental Compliance Manager that the implosion may need to be delayed. The Lead PSO will keep the Environmental Compliance Manager informed about the disposition of the animal. If the animal remains in the exclusion zone, blasting will be delayed until it has left the exclusion zone. If the animal dives and is not seen again, blasting will be delayed at least 15 minutes for pinnipeds and small cetacean (harbor porpoise), and 30 minutes for bottlenose dolphin. After the implosion has occurred, the PSOs will continue to monitor the area for at least 60 minutes.

(3) Data Collection

Each PSO will record the observation position, start and end times of observations, and weather conditions (*i.e.,* sunny/cloudy, wind speed, fog, visibility). For each marine mammal sighting, the following will be recorded, if possible:

- Species.
- Number of animals (with or without pup/calf).
- Age class (pup/calf, juvenile, adult).
- Identifying marks or color (*e.g.,* scars, red pelage, damaged dorsal fin).
- Position relative to Piers E4 or E5 (distance and direction).
- Movement (direction and relative speed).
- Behavior (*e.g.,* logging [resting at the surface], swimming, spy-hopping [raising above the water surface to view the area], foraging).

(4) Post-Implosion Survey

Although any injury or mortality from the implosions of Piers E4 and E5 is very unlikely, boat or shore surveys will be conducted for 3 days following the event, to determine whether any injured or stranded marine mammals are in the area. If an injured or dead animal is discovered during these surveys or by other means, the NMFS-designated stranding team will be contacted to pick up the animal. Veterinarians will treat the animal or will conduct a necropsy to attempt to determine whether it stranded because of the Piers E4 and E5 implosions.

Proposed Reporting Measures

CALTRANS would be required to submit a draft monitoring report within 90 days after completion of the construction work or the expiration of the IHA (if issued), whichever comes earlier. This draft report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. NMFS would have an opportunity to provide comments on the draft report within 30 days, and if NMFS has comments, CALTRANS would address the comments and submit a final report to NMFS within 30 days. If no comments are provided by NMFS after 30 days receiving the report, the draft report is considered to be final.

Marine Mammal Stranding Plan

A stranding plan for the Pier E3 implosion was prepared in cooperation with the local NMFS-designated marine mammal stranding, rescue, and rehabilitation center. An updated version of this plan will be implemented during implosions of Piers E4 and E5. Although avoidance and minimization measures likely will prevent any injuries, preparations will be made in the unlikely event that marine mammals are injured. Elements of the plan will include the following:

1. The stranding crew will prepare treatment areas at an NMFS-designated facility for cetaceans or pinnipeds that may be injured from the implosions. Preparation will include equipment to treat lung injuries, auditory testing equipment, dry and wet caged areas to hold animals, and operating rooms if surgical procedures are necessary.
2. A stranding crew and a veterinarian will be on call near the Piers E4 and E5 area at the time of the implosions, to quickly recover any injured marine mammals, provide emergency veterinary care, stabilize the animal's condition, and transport individuals to an NMFS-designated facility. If an injured or dead animal is found, NMFS (both the regional office and headquarters) will be notified immediately, even if the animal appears to be sick or injured from causes other than the implosions.
3. Post-implosion surveys will be conducted immediately after the event and over the following 3 days to determine whether any injured or dead marine mammals are in the area.
4. Any veterinarian procedures, euthanasia, rehabilitation decisions, and time of release or disposition of the animal will be at the discretion of the NMFS-designated facility staff and the veterinarians treating the animals. Any necropsies to determine whether the injuries or death of an animal was the result of an implosion or other anthropogenic or natural causes will be conducted at an NMFS-designated facility by the stranding crew and veterinarians. The results will be communicated to both the CALTRANS and to NMFS as soon as possible, followed by a written report within a month.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

The distance to marine mammal threshold criteria for pile driving and blasting activities, and corresponding zones of influence (ZOI) have been determined based on underwater sound and pressure measurements collected during pervious activities in the SFOBB Project area. The numbers of marine mammals by species that may be taken by each type of take were calculated based on distance to the marine mammal threshold criteria, duration of the activity, and the estimated density of each species in the ZOI.

Estimates of Species Densities of Marine Mammals

No systematic line transect surveys of marine mammals have been performed in the San Francisco Bay. Therefore, the in-water densities of harbor seals, California sea lions, and harbor porpoises were calculated based on 15 years of observations during monitoring for the SFOBB construction and demolition. The amount of monitoring performed per year varied depending on the frequency and duration of construction activities with the potential to affect marine mammals. During the 237 days of monitoring from 2000 through 2015 (including 15 days of baseline monitoring in 2003), 822 harbor seals, 77 California sea lions, and 9 harbor porpoises were observed within the waters of the SFOBB east span. Density estimates for other species were made from stranding data, provided by the Marine Mammal Center (MMC).

1. Pacific Harbor Seal Density Estimates

Harbor seal density was calculated from all observations of animals in water during SFOBB Project monitoring from 2000 to 2015, divided by the size of the project area. These observations included data from baseline, pre-, during and post-pile driving, mechanical dismantling, onshore blasting, and offshore implosion activities. During this time, the population of harbor seals in the Bay remained stable (Manugian 2013). Therefore, substantial differences in numbers or behaviors of seals hauling out, foraging, or in their movements are not anticipated. All harbor seal observations within a 1 km^2 area were used in the estimate. Distances were recorded using a laser range finder (Bushnell Yardage Pro Elite 1500; ± 1.0 yard accuracy). Care was taken to eliminate multiple observations of the same animal, although this was difficult when more than three seals were foraging in the same area.

Density of harbor seals was highest near YBI and Treasure Island, probably because of the haul-out site and nearby foraging areas in Coast Guard and Clipper coves. Therefore, density estimates were calculated for a higher density area within 4,921 ft (1,500 m) west of Piers E4 and E5, which included the two foraging coves. A lower density estimate was calculated from the areas east of Piers E4 and E5, and beyond 4,921 ft (1,500 m) north and south of the bridge. Harbor seal densities in these two areas in spring-summer and fall-winter seasons are provided in Table 5.

2. California Sea Lion Density Estimates

Within the SFOBB Project area, California sea lion density was calculated from all observations of animals in water during SFOBB Project monitoring from 2000 to 2015, divided by the size of the project area. These observations included data from baseline, pre, during, and post-pile driving, mechanical dismantling, onshore blasting, and offshore implosion activities. All sea lion observations within a 1 km² area were used in the estimate. Distances were recorded using a laser range finder (Bushnell Yardage Pro Elite 1500; ± 1.0 yard accuracy). Care was taken to eliminate multiple observations of the same animal, although most sea lion observations involve a single animal.

California sea lion densities in late spring-early summer and late summer-fall seasons are provided in Table 5.

3. Northern Elephant Seal Density Estimates

Northern elephant seal density in the project area was calculated from the stranding records of the MMC, from 2004 to 2014. These data included both injured or sick seals and healthy seals. Approximately 100 elephant seals were reported in the Bay during this time; most of these hauled out and likely were sick or starving. The actual number of individuals in the Bay may have been higher because not all individuals would necessarily have hauled out. Some individuals may have simply left the Bay soon after entering. Data from the MMC show several elephant seals stranding on Treasure Island, and one healthy elephant seal was observed resting on the beach in Clipper Cove in 2012. Elephant seal pups or juveniles also may have stranded after weaning in the spring and when they returned to California in the fall (September through November). Density of northern elephant seal is estimated as the number of stranded seals over the SFOBB project area, which is 0.03 animal/km² (Table 5).

4. Harbor Porpoise Density Estimates

Harbor porpoise density was calculated from all observations during SFOBB Project monitoring, from 2000 to 2015. These observations included data from baseline, pre, during and post-pile driving, and onshore implosion activities. Over this period, the number of harbor porpoises that were observed entering and using the Bay increased. During the 15 years of monitoring in the SFOBB Project area, only nine harbor porpoises were observed, and all occurred between 2006 and 2015 (including two in 2014 and five in 2015). Density of harbor porpoise is estimated to be 0.021 animal/km² (Table 5).

5. Gray Whale Density Estimate

Gray whale density was estimated for the entire Bay as no observations have occurred of gray whales in the SFOBB Project area. Each year, two to six gray whales enter the Bay, presumably to feed, in the late winter through spring (February through April), per the MMC. Gray whales rarely occur in the Bay from October through December. The gray whale density was estimated based on a maximum of 6 whales occurring within the main area of San Francisco Bay, which yielded a density of 0.00004/km² (Thorson, pers. comm., 2014).

TABLE 5—ESTIMATED IN-WATER DENSITY OF MARINE MAMMALS IN THE SFOBB PROJECT AREA

Species	Main season of occurrence	Density west of piers E4 and E5 within 1,500 m of SFOBB (animals/km²)	Density east of piers E4 and E5 and/or beyond 1,500 m of SFOBB (animals/km²)
Harbor Seal	Spring–Summer	0.32	0.17
Harbor Seal	Fall–Winter	0.83	0.17
California Sea Lion	Late Summer–Fall (post breeding season)	0.09	0.09
California Sea Lion	Late Spring–Early Summer (breeding season)	0.04	0.04
Northern Elephant Seal	Late Spring–Early Winter	0.03	0.03
Harbor Porpoise	All Year	0.021	0.021
Gray Whale	Late Winter and Spring	0.00004	0.00004

Note: Densities for Pacific harbor seals, California sea lions and harbor porpoises are based on monitoring for the east span of the SFOBB from 2000 to 2013. Gray whale and elephant seal densities are estimated from sighting and stranding data from the MMC.

Estimated Takes by Pile Driving and Pile Removal

The numbers of marine mammals by species that may be taken by pile driving were calculated by multiplying the ensonified area above a specific species exposure threshold by the days of the activity and by the estimated density of each species in the ensonified area. As discussed above threshold distances were determined based on previously measured distances to thresholds during the driving of 42-inch-diameter (1.07 meters) pipe piles. The same threshold distances have been applied to all types and sizes of piles proposed for installation and removal (*i.e.*, sheet piles, H-piles, and pipe piles equal to or less than 36 inches [0.91 meter]). The take estimate is based on 132 days of pile driving to install 200 piles.

For rare species of which the density estimates are unknown, such as northern fur seal and bottlenose dolphin, NMFS worked with CALTRANS and allotted 20 northern fur seals and 10 bottlenose dolphin for incidental take by Level B behavioral harassment to cover the chance encounter in case these animals happen to occur in the project area.

A summary of estimated takes by in-water pile driving and pile removal is provided in Table 6.

TABLE 6—ESTIMATED TAKE OF MARINE MAMMALS FROM PILE DRIVING AND PILE REMOVAL ACTIVITIES

Species	Level B Harassment (Behavioral Response)	Level A Harassment
Pacific Harbor Seal	862	0
California Sea Lion	108	0
Northern Elephant Seal	13	0
Harbor Porpoise	13	0
Gray Whale	1	0
Northern fur seal	20	0
Bottlenose dolphin	10	0

The number of marine mammals by species that may be taken by implosion of Piers E4 and E5 were calculated based on distances to the marine mammal threshold for explosions (Table 4) and the estimated density of each species in the ensonified areas (Table 5). A summary of estimated and requested takes by controlled implosion is provided in Table 8.

TABLE 7—ESTIMATED EXPOSURES OF MARINE MAMMALS TO THE PIER E4 AND E5 IMPLOSIONS FOR LEVELS A AND B, AND MORTALITY

Species	Level B Exposures		Level A Exposures			Mortality
	Behavioral response	TTS	PTS	Gastro-intestinal track injury	Slight lung injury	
Pacific Harbor Seal	1	1	0	0	0	0
California Sea Lion	0	0	0	0	0	0
Northern Elephant Seal	0	0	0	0	0	0
Harbor Porpoise	0	0	0	0	0	0

However, the number of marine mammals in the area at any given time is highly variable. Animal movement depends on time of day, tide levels, weather, and availability and distribution of prey species. Therefore, to account for potential high animal density that could occur during the short window of controlled implosion, NMFS worked with CALTRANS and adjusted the estimated number upwards for the requested takes. These adjustments were based on likely group sizes of these animals.

A summary of estimated takes by implosion of Piers E4 and E5 is provided in Table 8.

TABLE 8—SUMMARY OF REQUESTED TAKES OF MARINE MAMMALS FOR THE PIER E4 AND E5 IMPLOSIONS

Species	Level B behavioral	Level B TTS
Pacific harbor seal	12	6
California sea lion	3	2
Northern elephant seal	2	1
Harbor porpoise	6	3
Northern fur seal	1	1
Bottlenose dolphin	2	2

A summary of the request incidental takes of marine mammals for CALTRANS SFOBB construction activity, including from in-water pile driving/pile removal and controlled implosion for Piers E4 and E5 is provided in Table 9. These take estimates represent "instances" of take and are likely overestimates of the number of individual animals taken, since some individuals are likely taken on multiple days. The more likely the individuals are to remain in the action area for multiple days, the greater the overestimate of individuals.

TABLE 9—SUMMARY OF REQUESTED TAKES OF MARINE MAMMALS FOR CALTRANS SFOBB PROJECT

Species	Level B behavioral	Level B TTS	Population	Percent take population
Pacific harbor seal	874	6	30,968	2.84
California sea lion	111	2	296,750	0.04
Northern elephant seal	15	1	179,000	0.01
Harbor porpoise	19	3	9,886	0.22
Northern fur seal	21	1	12,844	0.17
Gray whale	1	0	20,990	0.00

TABLE 9—SUMMARY OF REQUESTED TAKES OF MARINE MAMMALS FOR CALTRANS SFOBB PROJECT—Continued

Species	Level B behavioral	Level B TTS	Population	Percent take population
Bottlenose dolphin	12	2	323	4.33

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival" (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, *etc.*), the context of any responses (critical reproductive time or location, migration, *etc.*), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

To avoid repetition, this introductory discussion of our analyses applies to all the species listed in Table 9, given that the anticipated effects of CALTRANS' SFOBB construction activities involving pile driving and pile removal and controlled implosions for Piers E4 and E5 on marine mammals are expected to be relatively similar in nature. There is no information about the nature or severity of the impacts, or the size, status, or structure of any species or stock that would lead to a different analysis for this activity, or else species-specific factors would be identified and analyzed.

No injuries or mortalities are anticipated to occur as a result of CALTRANS' SFOBB construction activity associated with pile driving and pile removal and controlled implosion to demolish Piers E4 and E5, and none are proposed to be authorized. The relatively low marine mammal density and small Level A exclusion zones make injury takes of marine mammals unlikely, based on take calculation described above. In addition, the Level A exclusion zones would be thoroughly monitored before the proposed implosion, and detonation activity would be postponed if an marine mammal is sighted within the exclusion zone.

The takes that are anticipated and authorized are expected to be limited to short-term Level B harassment (behavioral and TTS). Marine mammals (Pacific harbor seal, northern elephant seal, California sea lion, northern fur seal, gray whale, harbor porpoise, and bottlenose dolphin) present in the vicinity of the action area and taken by Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise level during pile driving and pile removal and the implosion noise. A few marine mammals could experience TTS if they occur within the Level B TTS ZOI. However, as discussed early in this document, TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours. Therefore, it is not considered an injury. In addition, even if an animal receives a TTS, the TTS would be a one-time event from a brief impulse noise (about 5 seconds), making it unlikely that the TTS would involve into PTS. Finally, there is no critical habitat or other biologically important areas in the vicinity of CALTRANS' proposed Pier E4 and E5 controlled implosion areas (Calambokidis *et al.*, 2015).

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the "Anticipated Effects on Marine Mammal Habitat" section. There is no biologically important area in the vicinity of the SFOBB project area. The project activities would not permanently modify existing marine mammal habitat. The activities may kill some fish and cause other fish to leave the area temporarily, thus impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from CALTRANS's SFOBB construction activity and the associated Piers E4 and E5 demolition via controlled implosion will have a negligible impact on the affected marine mammal species or stocks.

Small Number

The requested takes represent less than 4.33% of all populations or stocks potentially impacted (see Table 9 in this document). These take estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment and TTS (Level B harassment). The numbers of marine mammals estimated to be taken are small proportions of the total populations of the affected species or stocks. In addition, the mitigation and monitoring measures (described previously in this document) prescribed in the proposed IHA are expected to reduce even further any potential disturbance to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no subsistence uses of marine mammals in the proposed project area; and, thus, no subsistence uses impacted by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

NMFS has determined that issuance of the IHA will have no effect on listed marine mammals, as none are known to occur in the action area.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) for the take of marine mammals incidental to construction of the East Span of the SFOBB and made a Finding of No Significant Impact (FONSI) on November 4, 2003. Due to the modification of part of the construction project and the mitigation measures, NMFS reviewed additional information from CALTRANS regarding empirical measurements of pile driving noises for the smaller temporary piles without an air bubble curtain system and the use of vibratory pile driving. NMFS prepared a Supplemental Environmental Assessment (SEA) and analyzed the potential impacts to marine mammals that would result from the modification of the action. A Finding of No Significant Impact (FONSI) was signed on August 5, 2009. In addition, for CALTRANS' Piers E4 and E5 demolition using controlled implosion, NMFS prepared an SEA and analyzed the potential impacts to marine mammals that would result from the modification. A Finding of No Significant Impact (FONSI) was signed on September 3, 2015. The proposed activity and expected impacts remain within what was previously analyzed in the EA and SEAs. Therefore, no additional NEPA analysis is warranted. A copy of the SEA and FONSI is available upon request (see **ADDRESSES**).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to CALTRANS for conducting SFOBB activities involving pile driving and pile removal, as well as Piers E4 and E5 demolition via controlled implosion, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

1. This Authorization is valid from August 15, 2016, through August 14, 2017.

2. This Authorization is valid only for activities associated with the SFOBB activities and demolition activities in San Francisco Bay.

3. (a) The species authorized for incidental harassment takings, Level B harassment only, are: Pacific harbor seal (*Phoca vitulina richardii*), California sea lion (*Zalophus californianus*), northern elephant seal (*Mirounga angustirostris*), northern fur seal (*Callorhinus ursinus*), gray whale (*Eschrichtius robustus*), harbor porpoise (*Phocoena phocoena*), and bottlenose dolphin (*Tursiops truncatus*).

(b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

- In-water pile driving and pile removal activities; and
- Piers E4 and E5 demolition via controlled implosion and associated test blasting.

(c) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the West Coast Administrator (206–526–6150), National Marine Fisheries Service (NMFS) and the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401, or her designee (301–427–8418).

4. The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, at least 48 hours prior to the start of activities identified in 3(b) (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible).

5. Prohibitions

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in Table 9 of this notice. The taking by Level A harassment, injury or death of these species or the taking by harassment, injury or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

(b) The taking of any marine mammal is prohibited whenever the required protected species observers (PSOs), required by condition 7(a), are not present in conformance with condition 7(a) of this Authorization.

6. Mitigation

(a) Time Restriction

In-water pile driving and pile removal activities and the controlled implosion of Piers E4 and E5 shall only be conducted during daylight hours and with enough time for pre and post activity monitoring, and with good visibility when the largest exclusion zone can be visually monitored.

(b) Installation of Sound Attenuation Systems

(i) For in-water pile driving, energy attenuator (such as air bubble curtain system or dewatered cofferdam) shall be used for all impact pile driving of pipe piles, with the exception of pile proofing and H-piles.

(ii) For controlled implosion of Piers E4 and E5, CALTRANS should install a Blast Attenuation System (BAS) prior to demolition to reduce the shockwave from the implosion.

(c) Establishment of Exclusion Zones and Zones of Influence

(i) For in-water pile driving and pile removal activities, CALTRANS shall establish exclusion zones where received underwater sound pressure levels (SPLs) are higher than 180 dB (rms) and 190 dB (rms) re 1 μPa for cetaceans and pinnipeds, respectively, and zones of influence (ZOIs) where received underwater sound pressure levels (SPLs) are higher than 160 dB (rms) and 120 dB (rms) re 1 μPa for impulse noise sources (impact pile driving) and non-impulses noise sources (vibratory pile driving), respectively. The isopleth of these zones are provided in Table 2.

(ii) For Piers E4 and E5 controlled implosion and associated test blasting, CALTRANS shall establish exclusions zones and ZOIs that are appropriate to specific marine mammal functional hearing group shall be established. The isopleth of these zones are provided in Table 3.

(d) Exclusion Zone Monitoring for Mitigation Measures.

(i) NMFS-approved protected species observers (PSOs) shall conduct initial survey of the exclusion for 30 minutes to ensure that no marine mammals are seen within the zones before impact pile driving and controlled implosion.

(ii) If marine mammals are found within the exclusion zones, impact pile driving and/or controlled implosion of the piers shall be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes for pinnipeds and small cetacean (harbor porpoise) and harbor porpoise and 30 minutes for gray whale and bottlenose dolphin. If no marine mammals are seen by the observer in that time it would be assumed that the animal has moved beyond the exclusion zone.

(iii) If the time between pile-segment driving is less than 30 minutes, a new 30-minute survey is unnecessary provided marine mammal monitors continue observations during the interruption. If pile driving ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone(s) prior to the commencement of pile-driving, the PSO(s) must notify the Resident Engineer (or other authorized individual) immediately and implement measures in condition 5(d)(ii).

(e) Soft Start

CALTRANS and its contractor shall implement soft start, *i.e.*, starting the pile driving hammer at the lowest power setting and gradually ramp up to full power, prior to operating pile driving hammers at full capacity for both impact and vibratory pile driving.

(f) Shut-down

For pile driving activities, if a marine mammal is sighted within the exclusion zone or is approaching the exclusion zone after pile-driving has begun, pile driving shall be shut-down. CALTRANS may resume pile driving after a shut-down measure following condition 5(d)(ii).

(g) Communication

For controlled implosion, the Lead PSO shall be in constant contact with the Resident Engineer on site and the blasting crew to ensure that no marine mammal is within the exclusion zone before the controlled implosion.

7. Monitoring:

(a) Protected Species Observers.

(i) CALTRANS shall employ NMFS-approved PSOs to conduct marine mammal monitoring for its SFOBB construction activities that involve in-water pile driving and pile removal and controlled pier implosion.

(ii) Marine mammal monitoring shall begin at least 30 minutes prior to the start of the activities, through the entire activities, and continue to 30 minutes after the construction activities and 60 minutes after the implosion events.

(iii) Observations shall be made using high-quality binoculars (*e.g.,* Zeiss, 10 x 42 power). PSOs shall be equipped with radios or cell phones for maintaining contact with other observers and CALTRANS engineers, and range finders to determine distance to marine mammals, boats, buoys, and construction equipment.

(iv) For in-water pile driving and pile removal.

(A) CALTRANS shall implement onsite marine mammal monitoring for 100% of all unattenuated impact pile driving of H-piles for 180- and 190-dB re 1 μPa exclusion zones and 160-dB re 1 μPa Level B harassment zone, and attenuated impact pile driving of pipe piles (except pile proofing) for 180- and 190-dB re 1 μPa exclusion zones.

(B) CALTRANS shall also monitor 20% of the attenuated impact pile driving for the 160-dB re 1 μPa Level B harassment zone, and 20% of vibratory pile driving for the 120 dB re 1 μPa Level B harassment zone.

(C) Data on all observations would be recorded and shall include the following information:

- Location of sighting;
- Species;
- Number of individuals;
- Number of calves present;
- Duration of sighting;
- Behavior of marine animals sighted;
- Direction of travel;
- When in relation to construction activities did the sighting occur (*e.g.,* before, "soft-start", during, or after the pile driving or removal); and
- Other human activities in the area.

(v) For controlled implosion of Piers E4 and E5:

(A) A minimum of 8–10 PSOs shall be required during the Piers E4 and E5 controlled implosion so that the exclusion zone, Level B Harassment TTS and Behavioral ZOIs, and surrounding area can be monitored.

(B) PSOs shall be positioned near the edge of each of the threshold criteria zones and shall utilize boats, barges, and bridge piers and roadway.

(C) The Lead PSO shall be in constant communication with the Environmental Compliance Manager that will be located with the CALTRANS Engineer and the Blasting Supervisor (or person that will be in charge of detonating the charges) during the implosion.

(D) Boat or shore surveys shall be conducted immediately after the event and for the three days following the event to determine if there are any injured or stranded marine mammals in the area.

(E) Monitoring Data Collection:

For each marine mammal sighting, the following shall be recorded, if possible:

- Species.
- Number of animals (with or without pup/calf).
- Age class (pup/calf, juvenile, adult).
- Identifying marks or color (scars, red pelage, damaged dorsal fin, etc.).
- Position relative to Pier E4 or E5 (distance and direction).
- Movement (direction and relative speed).
- Behavior (logging [resting at the surface], swimming, spyhopping [raising above the water surface to view the area], foraging, *etc.*)
- Duration of sighting or times of multiple sightings of the same individual

8. Reporting:

(a) CALTRANS shall submit a draft monitoring report within 90 days after completion of the construction work or the expiration of the IHA (if issued), whichever comes earlier. This report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

(b) NMFS would have an opportunity to provide comments within 30 days after receiving the draft report, and if NMFS has comments, CALTRANS shall address the comments and submit a final report to NMFS within 30 days.

(c) If NMFS does not provide comments within 30 days after receiving the report, the draft report is considered to be final.

(d) In the unanticipated event that the construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization (if issued), such as an injury, serious injury, or mortality, CALTRANS shall immediately cease all operations and immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Status of all sound source use in the 24 hours preceding the incident;

(iv) Environmental conditions (*e.g.,* wind speed and direction, sea state, cloud cover, visibility, and water depth);

(v) Description of marine mammal observations in the 24 hours preceding the incident;

(vi) Species identification or description of the animal(s) involved;

(vii) The fate of the animal(s); and

(viii) Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with CALTRANS to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. CALTRANS may not resume their activities until notified by NMFS via letter, email, or telephone.

(e) In the event that CALTRANS discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), CALTRANS will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with CALTRANS to determine whether modifications in the activities are appropriate.

(f) In the event that CALTRANS discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), CALTRANS shall report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators, within 24 hours of the discovery. CALTRANS shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. CALTRANS can continue its operations under such a case.

9. Marine Mammal Stranding Plan: A marine mammal stranding plan shall be prepared in cooperation with the local NMFS-designated marine mammal stranding, rescue, and rehabilitation center. Elements of that plan would include the following:

(a) The stranding crew shall prepare treatment areas at the NMFS-designated facility for cetaceans or pinnipeds that may be injured from the implosion. Preparation shall include equipment to treat lung injuries, auditory testing equipment, dry and wet caged areas to hold animals, and operating rooms if surgical procedures are necessary. Equipment to conduct auditory brainstem response hearing testing would be available to determine if any inner ear threshold shifts (TTS or PTS) have occurred.

(b) A stranding crew and a veterinarian shall be on call near the Piers E4 and E5 sites at the time of the implosion to quickly recover any injured marine mammals, provide emergency veterinary care, stabilize the animal's condition, and transport individuals to the NMFS-designated facility. If an injured or dead animal is found, NMFS (both the regional office and headquarters) shall be notified immediately even if the animal appears to be sick or injured from other than blasting.

(c) Post-implosion surveys shall be conducted immediately after the event and over the following three days to determine if there are any injured or dead marine mammals in the area.

(d) Any veterinarian procedures, euthanasia, rehabilitation decisions and time of release or disposition of the animal shall be at the discretion of the NMFS-designated facility staff and the veterinarians treating the animals. Any necropsies to determine if the injuries or death of an animal was the result of the blast or other anthropogenic or natural causes will be conducted at the NMFS-designated facility by the stranding crew and veterinarians. The results shall be communicated to both CALTRANS and to NMFS as soon as possible with a written report within a month.

10. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

11. A copy of this Authorization must be in the possession of each contractor who performs the in-water pile driving, pile removal, and Piers E4 and E5 controlled implosion work.

Dated: July 21, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; Patent Processing

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office, Commerce.

Title: Patent Processing.

OMB Control Number: 0651–0031.

Form Number(s): PTO/AIA/22, PTO/AIA/24, PTO/AIA/24B, PTO/AIA/31, PTO/AIA/32, PTO/AIA/33, PTO/AIA/40, PTO/AIA/41, PTO/AIA/96, PTO/SB/08a, PTO/SB/08b, PTO/SB/17i, PTO/SB/21, PTO/SB/22, PTO/SB/24, PTO/SB/24B, PTO/SB/25, PTO/SB/26, PTO/SB/27, PTO/SB/30, PTO/SB/31, PTO/SB/32, PTO/SB/33, PTO/SB/35, PTO/SB/36, PTO/SB/37, PTO/SB/38, PTO/SB/39, PTO/SB/43, PTO/SB/61, PTO/SB/63, PTO/SB/64, PTO/SB/64a, PTO/SB/67, PTO/SB/68, PTO/SB/91, PTO/SB/92, PTO/SB/96, PTO/SB/97, PTO/SB/130, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B, PTOL–413A, and PTOL–413C.

Type of Request: Regular.

Number of Respondents: 3,542,082.

Estimated Time per Response: The USPTO estimates that it will take approximately 5 minutes (0.08 hours) to 8 hours to complete a single item in this collection. This includes the time to gather the necessary information, create the documents, and submit the completed request to the USPTO.

Burden Hours: 3,628,380 hours.

Cost Burden: $952,456,245.00.

Needs and Uses: The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 131 to examine an application for patent and, when appropriate, issue a patent. The USPTO is also required to publish patent applications, with certain exceptions, promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under Title 35, United States Code ("eighteen-month publication"). Certain situations may arise which require that additional information be supplied in order for the USPTO to further process the patent or application. The USPTO administers the statutes through various sections of the rules of practice in 37 CFR part 1. The information in this collection can be used by the USPTO to continue the processing of the patent or application to ensure that applicants are complying with the patent regulations and to aid in the prosecution of the application.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through *reginfo.gov.* Follow the instructions on the Web site to view Department of Commerce collections currently under review by OMB.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include "0651–0031 copy request" in the subject line of the message.
- *Mail:* Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before August 25, 2016 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: July 19, 2016.

Marcie Lovett,

Records Management Division Director, OCIO, United States Patent and Trademark Office.

[FR Doc. 2016–17699 Filed 7–25–16; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery, Honor Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Honor Subcommittee of the Advisory Committee on Arlington National Cemetery (ACANC). This meeting is open to the public. For more information about the Committee and the Subcommittees, please visit *http://www.arlingtoncemetery.mil/AboutUs/FocusAreas.aspx.*

DATES: The Honor Subcommittee will meet from 09:30 p.m. to 15:00 p.m. on, 23 August, 2016.

ADDRESSES: Arlington National Cemetery Welcome Center, Conference Room, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Keating; Designated Federal Officer (Alternate) for the Committee and the Subcommittees, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at *timothy.p.keating.civ@mail.mil,* or by phone at 1–877–907–8585.

SUPPLEMENTARY INFORMATION: This subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.150).

Purpose of the Meeting: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations. The Honor Subcommittee is directed to provide independent recommendations of methods to address the long-term future of Arlington National Cemetery, including how best to extend the active burials and on what ANC should focus once all available space has been used, the placement of commemorative monuments and the manner in which to ensure the living history of the cemetery is preserved.

Proposed Agenda: The Subcommittee will discuss cemetery master planning, current eligibility and interment trends, and potential options to extend the life of active burials, to include restricting eligibility, at Arlington National Cemetery.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Arlington National Cemetery conference room is fully handicapped accessible. For additional information about public access procedures, contact Mr. Timothy Keating, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Mr. Timothy Keating, the subcommittee's Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will review all timely submitted written comments or statements with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–17470 Filed 7–25–16; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Advisory Committee on Arlington National Cemetery ("the Committee").

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Committee's charter is being renewed pursuant to 10 U.S.C. 4723 and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The Committee's charter and contact information for the Committee's Designated Federal Officer (DFO) can be found at *http://www.facadatabase.gov/.*

The Committee will make periodic reports and recommendations to the Secretary of the Army with respect to the administration of Arlington National Cemetery, the erection of memorials at the cemetery, and master planning for the cemetery. Any and all advice and recommendations will also be forwarded to the Secretary of Defense or the Deputy Secretary of Defense. The Committee will be composed of no more than nine members, who are eminent authorities in their respective fields of interest or expertise, specifically bereavement practices and administrative oversight, the erection of memorials, and master planning for extending the life of the cemetery, including one member nominated by the Secretary of Veterans Affairs, one member nominated by the Secretary of the American Battle Monuments Commission, and no more than seven members nominated by the Secretary of the Army. All members are appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner free from conflict of interest. Except for reimbursement of official Committee-related travel and per diem, members serve without compensation.

The DoD may establish subcommittees, task forces, or working groups to support the Committee. All subcommittees operate under the provisions of FACA and the Government in the Sunshine Act, will not work independently of the Committee, report all findings to the Committee for full deliberation and discussion, and have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Committee. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees.

The Committee's DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD employee, and must be in attendance for the duration of each and every Committee or subcommittee meeting. The public or interested organizations may submit written statements to the Committee membership about the Committee's mission and functions. Such statements may be submitted at any time or in response to the stated agenda of planned Committee meetings. All written statements must be submitted to the Committee's DFO who will ensure the written statements are provided to the membership for their consideration.

Dated: July 21, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–17622 Filed 7–25–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Western Everglades Restoration Project, Hendry, Broward, Collier Counties, Florida

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps) is beginning preparation of a National Environmental Policy Act assessment for the Western Everglades Restoration Project (WERP). The Everglades ecosystem, including Lake Okeechobee, encompasses a system of diverse wetland landscapes that are hydrologically and ecologically connected across more than 200 miles from north to south and across 18,000 square miles of southern Florida. In 2000, the U.S. Congress authorized the Federal government, in partnership with the State of Florida, to embark upon a multi-decade, multi-billion dollar Comprehensive Everglades Restoration Plan (CERP) to further protect and restore the remaining Everglades ecosystem while providing for other water-related needs of the region. CERP involves modification of the existing network of drainage canals and levees that make up the Central and Southern Florida Flood Control Project. One of the next steps for implementation of CERP is to identify opportunities within the tributary areas of Water Conservation Area (WCA) 3A to restore natural areas within the Big Cypress Seminole Indian Reservation and adjacent portions of Big Cypress National Preserve (BCNP) and the Miccosukee Indian Reservation. Encompassing approximately 440,000 acres located primarily in eastern Hendry County, WCA 3A tributary areas include the C–139, Feeder Canal and L–28 Gap Basins as well as the C–139 Annex and L–28 Interceptor. These areas are collectively called the Western Basins as they are located along the western edge of the Everglades and were historic flow ways. Both water supply and water quality of storm water runoff are challenges facing the Western Basins.

ADDRESSES: U.S. Army Corps of Engineers, Planning and Policy Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019.

FOR FURTHER INFORMATION CONTACT: Melissa Nasuti at 904–232–1368 or email at *melissa.a.nasuti@usace.army.mil.* Additional information is also available at *http://bit.ly/WesternEverglades.*

SUPPLEMENTARY INFORMATION:

a. Since 2000, much progress has been made. Construction has begun on the first generation of CERP project modifications already authorized by Congress. These include the Picayune Strand Restoration, the Indian River Lagoon South and Site 1 Impoundment Projects. Congressional authorization has been received for the second generation of CERP projects, including Biscayne Bay Coastal Wetlands—Phase 1, the Broward County Water Preserve Areas, the Caloosahatchee River (C–43) West Basin Storage Reservoir, and the C–111 Spreader Canal Western Project which are already under construction or are operational, and the Broward County Water Preserve Areas which is currently being designed. The Central Everglades Planning Project is currently awaiting congressional authorization. All of these CERP projects contribute significant ecological benefits to the system and the specific regional habitats in which they are located. The original CERP Project identified to restore and reconnect the western Everglades ecosystem was called the Big Cypress/L–28 Interceptor Modification. The purpose of this project, as defined within the CERP, is to reestablish sheet flow from the West Feeder Canal across the Big Cypress Seminole Indian Reservation and into BCNP, maintain flood protection on Seminole Tribal lands, and ensure that inflows to the North and West Feeder Canals meet applicable water quality standards. Project features considered under CERP include modification of levees and canals, water control structures, pumps, and stormwater treatment areas with a total storage capacity of 7,600 acre-feet located within and adjacent to the Miccosukee and Seminole Indian Reservations in Collier and Hendry Counties. This CERP component will serve as the starting point for the WERP and will be refined through the planning process.

b. The objectives of the WERP are to improve the quality, quantity, timing and distribution of water needed to restore and reconnect the western Everglades ecosystem.

c. A scoping letter will be used to invite comments from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals.

d. A scoping meeting will be held August 16th, 2016 from 6:30 to 9:00 p.m. at the John Boy Auditorium, 1200 South W.C. Owen Avenue, Clewiston, Florida 33440.

e. All alternative plans will be reviewed under provisions of appropriate laws and regulations, including the Endangered Species Act, Fish and Wildlife Coordination Act, Clean Water Act, and Farmland Protection Policy Act.

f. The Draft Environmental Impact Assessment is expected to be available for public review in late 2017.

Dated: July 12, 2016.

Eric P. Summa,

Chief, Planning and Policy Division.

[FR Doc. 2016–17686 Filed 7–25–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2014–0018]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 25, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Application Processing and Summary Record; NAVCRUIT Form 1131/238; OMB Control Number 0703–0029.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Number of Respondents: 14,000.

Responses per Respondent: 1.

Annual Responses: 14,000.

Average Burden per Response: 1 hour.

Annual Burden Hours: 14,000.

Needs and Uses: All persons interested in entering the U.S. Navy or U.S. Navy Reserve, in a commissioned status must provide various personal data in order for a Selection Board to determine their qualifications for naval service and for specific fields of endeavor which the applicant intends to pursue. This information is used to recruit and select applicants who are qualified for commission in the U.S. Navy or U.S. Navy Reserve.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov*. Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: July 21, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–17644 Filed 7–25–16; 8:45 am]

BILLING CODE 5001–06–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting: August 10 and September 14, 2016

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on *Wednesday, August 10, 2016* at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania. A business meeting will be held the following month, on *Wednesday, September 14, 2016* at the Historic Hotel Bethlehem, 437 Main Street, Bethlehem, Pennsylvania. The hearing and business meeting are open to the public.

Public Hearing. The public hearing on *August 10, 2016* will begin at *1:30 p.m.* Hearing items will include draft dockets for the withdrawals, discharges and other water-related projects subject to the Commission's review.

The list of projects scheduled for hearing, including project descriptions, will be posted on the Commission's Web site, *www.drbc.net,* in a long form of this notice at least ten days before the hearing date. Draft resolutions scheduled for hearing also will be posted at *www.drbc.net* ten or more days prior to the hearing.

Written comments on matters scheduled for hearing on August 10 will be accepted through 5 p.m. on August 11. After the hearing on all scheduled matters has been completed, and as time allows, an opportunity for Open Public Comment will also be provided.

The public is advised to check the Commission's Web site periodically prior to the hearing date, as items scheduled for hearing may be postponed if additional time is deemed necessary to complete the Commission's review, and items may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public is also asked to be aware that project details commonly change in the course of the Commission's review, which is ongoing.

Public Meeting. The public business meeting on *September 14, 2016* will begin at *10:30 a.m.* and will include: Adoption of the Minutes of the Commission's June 15, 2016 business meeting, announcements of upcoming meetings and events, a report on hydrologic conditions, reports by the Executive Director and the Commission's General Counsel, and consideration of any items for which a hearing has been completed or is not required.

After all scheduled business has been completed and as time allows, the meeting will also include up to one hour of Open Public Comment.

There will be no opportunity for additional public comment for the record at the September 14 business meeting on items for which a hearing was completed on August 10 or a previous date. Commission consideration on September 14 of items for which the public hearing is closed may result in approval of the item (by docket or resolution) as proposed, approval with changes, denial, or deferral. When the Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date.

Advance Sign-Up for Oral Comment. Individuals who wish to comment on the record during the public hearing on August 10 or to address the Commissioners informally during the Open Public Comment portion of the meeting on either August 10 or September 14 as time allows, are asked to sign up in advance by contacting Ms.

Paula Schmitt of the Commission staff, at *paula.schmitt@drbc.nj.gov.*

Addresses for Written Comment. Written comment on items scheduled for hearing may be delivered by hand at the public hearing or: By hand, U.S. Mail or private carrier to: Commission Secretary, P.O. Box 7360, 25 State Police Drive, West Trenton, NJ 08628; by fax to Commission Secretary, DRBC at 609–883–9522; or by email (preferred) to *paula.schmitt@drbc.nj.gov.* If submitted by email, written comments on a docket should also be sent to Mr. David Kovach, Manager, Project Review Section at *david.kovach@drbc.nj.gov.*

Accommodations for Special Needs. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Additional Information, Contacts. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Carol Adamovic, 609–883–9500, ext. 249. For other questions concerning hearing items, please contact Judith Scharite, Project Review Section assistant at 609–883–9500, ext. 216.

Dated: July 20, 2016.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2016–17697 Filed 7–25–16; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0087]

Agency Information Collection Activities; Comment Request; National Teacher and Principal Survey of 2017–2018 (NTPS 2017–18) Preliminary Field Activities

AGENCY: Department of Education (ED), National Center for Education Statistics (NCES).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 26, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0087. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Teacher and Principal Survey of 2017–2018 (NTPS 2017–18) Preliminary Field Activities.

OMB Control Number: 1850–0598.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 13,015.

Total Estimated Number of Annual Burden Hours: 3,537.

Abstract: The National Teacher and Principal Survey (NTPS), conducted biennially by the National Center for Education Statistics (NCES), is a system of related questionnaires that provides descriptive data on the context of elementary and secondary education. Redesigned from the Schools and Staffing Survey (SASS) with a focus on flexibility, timeliness, and integration with other ED data, the NTPS system allows for school, principal, and teacher characteristics to be analyzed in relation to one another. NTPS is an in-depth, nationally representative survey of first through twelfth grade public school teachers, principals, and schools. Kindergarten teachers in schools with at least a first grade are also surveyed. NTPS utilizes core content and a series of rotating modules to allow timely collection of important education trends as well as trend analysis. Topics covered include characteristics of teachers, principals, schools, teacher training opportunities, retention, retirement, hiring, and shortages. This request is to contact districts and schools in order to begin preliminary activities for NTPS 2017–18, namely: (a) Contacting and seeking research approvals from special contact districts, where applicable, (b) notifying districts that their school(s) have been selected for NTPS 2017–18, and (c) notifying sampled schools of their selection for the survey and verifying their mailing addresses.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–17629 Filed 7–25–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Providing High-Quality Career and Technical Education Programs for Underserved, High-Need Youth Through a Pay for Success Model

AGENCY: Office of Career, Technical, and Adult Education (OCTAE), Department of Education.

ACTION: Notice.

Overview Information: Providing High-Quality Career and Technical

Education (CTE) Programs for Underserved, High-Need Youth through technical assistance on Pay For Success Models (CTE PFS TA Program) Notice inviting applications for a new award in fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.051

DATES:

Applications Available: July 26, 2016.

Date of Pre-Application Meeting: August 2, 2016.

Deadline for Transmittal of Applications: August 25, 2016.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of the program: The purpose of this program is to support the development of a financing model, High-Quality Pay for Success (PFS),[1] to implement new or scale up existing high-quality career and technical education (CTE) projects for Underserved, High-Need Youth (CTE PFS Project). To this end, the Department will award a grant to an Intermediary to provide technical assistance for the first two of three phases of a PFS financing model. In phase one, the Intermediary will complete Feasibility Studies in four Local CTE Sites. In phase two, the Intermediary will provide or support transaction structuring, based on the limited funding level, for up to three out of the previously identified four local sites to the extent that the local site's CTE PFS project is determined to be feasible. While it is our intent that all of the selected local CTE PFS projects will result in a fully-structured PFS project ready to launch, each program may have different challenges that might result in not all projects completing these first two phases by the end of the grant period. The ultimate aim of the CTE PFS TA Program is to improve outcomes for Underserved, High-Need Youth through fully-structured High-Quality PFS Projects ready to be implemented in the Local CTE Sites using High-Quality CTE programs.

Background: Section 114(c)(1) of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) authorizes the Office of Career, Technical, and Adult Education (OCTAE) to provide support directly or through grants, contracts, or cooperative agreements, for research, development, demonstration, evaluation, assessment, capacity-building, and technical assistance activities aimed at improving the quality and effectiveness of CTE programs authorized under Perkins IV.

PFS financing models offer a way for the Federal government to support the development and scaling up of effective, evidence-based programs for Underserved, High-Need Youth and to test new, innovative programs. There is a small but growing body of evidence about CTE program models that have been shown to produce positive outcomes for Underserved, High-Need Youth. The following program models, including career academies and early college high schools, are examples of the kinds of strong CTE program models that may be used by CTE sites that are testing PFS financing models.

Career academies restructure large high schools into smaller learning communities. They offer courses and activities connected to career or occupational themes and typically require all students to complete a work-based learning experience. A randomized controlled trial, over a 12-year period, found that career academies result in positive effects on labor market outcomes.[2] Students in career academies have been shown to have earned, on average, 11 percent ($2,088) more per year than did students in the non-career academies group, an increase of $16,704 (in 2006 dollars) in total earning over the eight years following high school.[3]

Early college high schools (ECHS) provide students with exposure to college and the opportunity to take college courses while they are in high school. ECHS partner with colleges and universities to offer all students an opportunity to earn an Associate's degree or up to two years of college credit toward an Associate's or Bachelor's degree during high school at no or low cost to students. ECHS often have a CTE focus, such as health, life sciences, or information technology. A randomized controlled trial conducted over an eight-year period found that ECHS students graduated from high school at a higher rate than non-ECHS students (86 percent versus 81 percent).[4] Researchers also found that ECHS students had higher postsecondary enrollment rates compared to non-ECHS students (80 percent versus 71 percent).[5] Additionally, 22 percent of ECHS students earned a postsecondary degree during the study period versus two percent of comparison students.[6]

Other CTE models that have some evidence of similar positive outcomes for youth include: (1) CTE-focused high schools in Philadelphia had higher on-time graduation rates compared to traditional public high schools in the district; [7] (2) Project Lead the Way, a project/problem-based approach to STEM [8] education that is aligned with Common Core State Standards in math and English, and Next Generation Science Standards resulted in students increasing their in-demand knowledge and transferable job skills; [9] (3) Linked Learning,—an educational approach that not only integrates academic and high-quality career and technical education but is also sequenced to support students transitioning from middle school through high school and postsecondary education,—resulted in students earning more credits in the first three years compared to their peers in traditional high school programs (1.8 credits more at the end of 11th grade), and being more likely to stay in their school district through 12th grade compared to similar students in traditional programs (five percentage points more); [10] [11] [12] and (4) CTE-focused Smaller Learning Communities—a school restructuring strategy that involves smaller, personalized learning environments that are often focused on a specific career theme—resulted in increased four-year graduation rates for participating students (70.4 percent for smaller learning community enrollees compared to 60.9 percent for their control group counterparts.[13] [14]

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[1] Defined terms are used throughout the notice and are indicated by capitalization.

[2] Kemple, James and Cynthia Willner. 2008. *Career Academies: Long-Term Impacts on Labor Market Outcomes, Educational Attainment, and Transitions to Adulthood.* New York, NY: MDRC. p.42. Retrieved from *http://www.mdrc.org/sites/default/files/full_50.pdf.*

[3] Ibid. p. 12.

[4] Berger, A., Turk-Bicakci, L., Garet, M., Song, M., Knudson, J., Haxton, C., Zeiser, K., Hoshen, G., Ford, J., Stephan, J., Keating, K., & Cassidy, L. (2013). Early college, early success: Early College High School Initiative Impact Study. Washington, DC: American Institutes for Research. p. 31. Retrieved from *http://www.air.org/resource/early-college-early-success-early-college-high-school-initiative-impact-study-2013.*

[5] Ibid. p. 29.

[6] Ibid. p. 33.

[7] Neild, Ruth Curran, Christopher Boccanfuso, and Vaughan Byrnes. 2013. *The Academic Impacts of Career and Technical Schools: A Case Study of a Large Urban School District.* Baltimore, MD: Johns Hopkins University, Center for Social Organization of Schools. Retrieved from *http://new.every1graduates.org/wp-content/uploads/2013/02/The-Academic-Impacts-of-Career-and-Technical-Schools.pdf.*

[8] STEM is the abbreviation for "Science, Technology, Engineering and Mathematics."

[9] Starobin, S.S., Schenk, T. Jr., Laanan, F.S., Retwisch, D., Kollasch, A., Chen, Y., & Baul, T. (2013). Evaluation research of the Iowa Project Lead the Way: Final project report, June 2013. Prepared for the Kern Family Foundation. Retrieved from *http://www.cclp.hs.iastate.edu/research/rbriefs/PLTWReport2013-Final.*

[10] Guha, R., K. Caspary, R. Stites, C. Padilla, N. Arshan, C. Park, V. Tse, S. Astudillo, A. Black, & N. Adelman. (2014). *Taking Stock of the California Linked Learning District Initiative. Fifth-Year Evaluation Report.* Menlo Park, CA: SRI International. Retrieved from *http://www.connectedcalifornia.org/direct/files/resources/year5linkedlearningevaluationreportdec2014.pdf.*

[11] Ibid p.A–26.

[12] Ibid p.56.

PFS includes innovative contracting and financing models that test and advance promising and proven interventions while paying only for successful outcomes for families, individuals, and communities. Through a PFS project, a government (or other) entity enters into a contract to pay for the achievement of concrete, measurable outcomes for specific people or communities. Service providers deliver interventions to achieve these outcomes. Payments, known as Outcomes Payments, are made only if the interventions achieve those outcomes agreed upon in advance. In many cases, these outcomes are expected to occur over a period of years, meaning that the service providers need outside funding in order to cover their operating costs. In these cases, PFS financing is used by bringing in Investors, which are recruited typically by an Intermediary contracted by the government. The government or other entity makes Outcomes Payments that, where PFS financing is used, repay Investors for their capital that covered the costs of services (and sometimes other projects costs) and offer them a modest return. Ideally, with or without PFS financing, Outcomes Payments amount to a fraction of the short- and long-term cost savings to the government (or other) entity resulting from the successful outcomes. In other cases, these payments may represent an overall greater value to the government or other payor based on the achievement of better outcomes than would otherwise have occurred.

PFS contracting and financing require partnerships among multiple stakeholders. Partners typically include:

- One or more outcomes "payors," generally Federal, State, Local, or Tribal government entities, or other public or private entities that contract to pay for outcomes when achieved;
- Service provider(s), which deliver the intervention(s) intended to achieve the outcomes;
- Investor(s), which cover the upfront cost of implementing the intervention and at times other associated costs through PFS financing and may receive a return on investment if the outcomes are achieved; and
- Independent Evaluator, which determines, through a Rigorous Evaluation, whether the intervention achieved the Outcome Measure(s) sought.

Many PFS projects in the United States to date have also included a project coordinator or intermediary, an entity that facilitates and manages the PFS project and contracting process implementation.

The development, implementation, and evaluation of PFS projects typically involve three stages: Feasibility Study; transaction structuring; and agreement implementation.

The first stage, Feasibility Study, includes the following activities:

- Identification of outcome(s) sought;
- Assessment of community needs, assets, and capacity;
- Identification of a challenge(s) or barrier(s) for serving a particular population or addressing a social issue and determination of the total costs associated with the lack of intervention;
- Identification of interventions that can achieve the desired outcome(s);
- Projection of the potential public value, including any savings, to be achieved through potential interventions; and
- Determination of the willingness and capacity of stakeholders to implement a PFS project; and
- Development of Rigorous Evaluation methodology to determine if Outcome Measures have been achieved.

The second stage, transaction structuring, includes, but is not limited to, the following activities:

- Providing overall PFS coordination and support;
- Raising capital and developing capital structure;
- Mediating and facilitating agreements between each of the parties to the project;
- Aligning project design and evaluation;
- Tracking the impact of achieving the Outcome Measures on government funding streams in terms of cost savings and avoidance.
- Finalizing the PFS project and preparing for post-closing activities and allowing for transition of critical information to those implementing the third stage; and
- Supporting ramp-up activities.

The third stage, contract implementation, involves the implementation of the PFS project, whereby the intervention is delivered by the service provider, an evaluation is conducted, and performance is monitored. If the third-party evaluator confirms that outcome milestones have been reached, the outcomes payor makes Outcomes Payments to PFS Investors.

This CTE PFS TA program will focus on the first two stages of a PFS Project, Feasibility Study and transaction structuring, and aims to:

- Provide selected Local CTE Sites with the resources and expertise needed to effectively determine their ability to utilize a PFS financing model to implement new, or scale up existing, High-Quality CTE Programs for Underserved, High-Need Youth and the appropriateness of a PFS financing approach;
- Increase the capacity of the Local CTE Sites to identify, assess, support and scale evidence-based solutions for CTE programs;
- Increase the pipeline of CTE PFS projects;
- Increase awareness in the CTE field about how to successfully structure PFS financing transactions; and
- Identify the appropriate Rigorous Evaluation for evaluating a PFS-financed CTE program, the metrics for determining whether the program is successful based on the evaluation, and build understanding of how to align the processes of designing the project and the evaluation.

Purpose of the Competition: The purpose of this competition is to award a grant through a cooperative agreement to an Intermediary to select four Local CTE Sites and provide technical assistance to the four Local CTE Sites to implement new, or scale up existing, High-Quality CTE Programs for Underserved, High-Need Youth through a PFS model during the Feasibility Study phase and transaction structuring phase, with the ultimate aim of improving outcomes through a High-Quality PFS Project. This Intermediary must:

(a) Select four Local CTE Sites based on at least the selection criteria in section (a)(1) of the *Program Requirements* in this notice;

(b) Provide technical assistance:

(1) To the four selected Local CTE Sites throughout the Feasibility Study phase, including by completing four Feasibility Studies;

(2) To up to three of the four Local CTE Sites, as applicable, throughout the transaction structuring phase; and

(3) Including to:

(i) Develop PFS financing models as a basis for implementing new, or scaling up existing, High-Quality CTE Programs for Underserved, High-Need Youth;

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[13] Bloom, Howard and Rebecca Unterman. 2013. *Sustained Progress: New Findings about the Effectiveness and Operation of Small Public High Schools of Choice in New York City.* New York: MDRC. Retrieved from *http://www.mdrc.org/sites/default/files/sustained_progress_FR_0.pdf.*

[14] Ibid pp. 5–6.

(ii) Develop CTE PFS Projects that have the potential to improve the subsequent education, credentialing, employment, earnings, and other outcomes for Underserved, High-Need Youth;

(iii) Where feasible, develop fully-structured CTE PFS Agreements for the Local CTE Sites that will ultimately allow them to implement the CTE PFS Project and related evaluations; and

(4) Document the lessons learned from the CTE PFS Projects in a format and manner that the Department and four Local CTE Sites may disseminate to the CTE field and other key stakeholders to inform future CTE investments.

Program Requirements: We are establishing these requirements for the FY 2016 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1). The Secretary intends to make a grant through a cooperative agreement for the CTE PFS TA Program that includes two stages of work:

(a) *Feasibility Study:* The Intermediary will identify and provide technical assistance for up to four Local CTE Sites, including a completed PFS Feasibility Study for each Local CTE Site to determine if PFS is feasible to meet the needs of Underserved, High-Need students at those sites. Appropriate technical assistance may include, but is not limited, to:

(1) Identifying local CTE programs that could benefit from PFS technical assistance. In coordination with OCTAE, the Intermediary will design, finalize and implement an Open and Fair Competition to select the four Local CTE Sites. In order to ensure an Open and Fair Competition, the Intermediary or their agents that develop or draft specifications, requirements, statements of work, and invitations for application shall be excluded from competing. Solicitations shall clearly establish all requirements that the applicant shall fulfill for their proposal to be evaluated.

The competition conducted by the Intermediary must select four Local CTE Sites based on at least the following selection criteria:

(i) Geographic diversity (urban, suburban, and rural) of Local CTE Sites that have a significant population of Underserved, High-Need Youth who could benefit from High-Quality CTE Programs;

(ii) The extent that the Local CTE Site has the interest and capacity to implement a High Quality PFS Project;

(iii) The extent that the Local CTE Site has the capacity to work with the Intermediary to meet the requirements of the Feasibility Study and Transaction Structuring in the *Requirements* section of this notice;

(iv) The extent that the Local CTE Site has a high likelihood of proceeding to the transaction structuring phase of the CTE PFS Project;

(v) The extent that the Local CTE Site's work aligns or will align with local workforce demands;

(vi) The extent that the Local CTE Site is committed to or has experience using Evidenced-based Interventions;

(vii) The extent that the Local CTE Site has existing connections to local payors; and

(viii) If the Local CTE Site is a member of a consortia eligible to receive assistance under section 131 of Perkins IV or a consortium of eligible institutions eligible to receive assistance under section 132 of Perkins IV, the Intermediary must provide preference.

(2) Providing selected Local CTE Sites with technical assistance while completing a Feasibility Study during the Feasibility Study stage including the following tasks:

(i) Organizational/Programmatic Assessment:

(A) Ascertaining local needs and priority areas for CTE strategies most appropriate for a CTE PFS Project, for example: identifying possible evidence-based CTE programs, such as those described in the *Background* section of this notice; assessing the evidence base for different CTE interventions; assessing the likelihood of success of those CTE interventions in the local context; and assisting in determining the specific CTE intervention that will be used for the CTE PFS Project in each Local CTE Site;

(B) Assessing the strength, expertise, and capacity of an educational program to deliver the CTE intervention and achieve desired outcomes, including stakeholder and community support;

(C) Evaluating the willingness and capacity of stakeholders to implement a CTE PFS Agreement that would result in high-quality career and technical education projects for Underserved, High-Need Youth;

(D) Assessing available local, State, Federal, and administrative data, and other available evidence, data, and information relevant to carrying out potential CTE PFS Projects, including the Local CTE Sites' capacity for data matching and analysis; and

(E) Proposing a Rigorous Evaluation design to assess a CTE PFS Project's success.

(ii) Budgetary/Financial Analysis:

(A) Developing a framework and conducting analyses for estimating public sector savings and Benefits, and potential costs and performance-based payments for potential CTE PFS Projects in order to inform decision-making;

(B) Identifying and estimating potential costs and savings at each level of government and for each program; and

(C) Developing a budget estimating the costs needed for the transaction structuring phase, for ramp-up costs (if applicable), and implementation.

(iii) Legal/Regulatory Review:

(A) Identifying statutory, regulatory, fiscal, and programmatic barriers to implementation of CTE PFS Projects and recommending the necessary steps to remove these barriers; and

(B) Assessing and addressing appropriate risks (*e.g.,* the risk that the relevant entity may not be able to make future Outcomes Payments).

(iv) Data Capacity:

(A) Assessing the capacity of the Local CTE Sites to collect and analyze data pertaining to implementation and outcomes of the PFS Projects;

(B) Assisting sites to identify and gain access to relevant administrative data systems such as, but not limited to, Unemployment Insurance records, State Longitudinal Data Systems, Wage Record Interchange System, Federal Employment Data Exchange, and the National Student Clearinghouse, consistent with the Family Educational Rights and Privacy Act (20 U.S.C. 1232g; 34 CFR part 99) and other applicable Federal, State and local privacy laws; and

(C) Increasing capacity of Local CTE Sites to leverage administrative data to monitor progress on short- and long-term outcomes.

(v) Procurement:

(A) Designing and implementing a process for collecting relevant information from the public or key audiences to inform potential PFS activities for the Local CTE Sites, including priorities, service delivery, transaction structuring, evaluation, or other relevant issues, priorities, concepts and strategies;

(B) Designing and publicizing requests for proposals, notices of funding availability, or other relevant funding announcements/proposal solicitations for release by government entities or other payors to solicit the services of coordinators, service providers, or evaluators; and

(C) Assessing solicited proposals, including respondents' organizational capacity, past performance, operating model, strength of outcomes, efficiency, quality of management team, and suitability for PFS financing.

(3) Submitting to the Department the results of the Feasibility Study for each of the four Local CTE Sites that include, at a minimum:

(i) A description of the proposed evidence-based CTE intervention that includes, at a minimum, how the intervention is likely to improve student outcomes, based on quantitative, qualitative, or theoretical evidence; the goals, objectives, and outcomes to be achieved by the proposed CTE program which are clearly specified and measurable and will demonstrate student success; and how the intervention is appropriate to, and will successfully address, the needs of Underserved, High-Need Youth;

(ii) Identification of one or more clearly specified and measurable Outcome Measures related to education and employment;

(iii) A Cost-Benefit Analysis that accounts for, among other things, costs, savings and other benefits across programs and levels of government;

(iv) Identification of any statutory or legal barriers to implementing a CTE PFS Project and how they will be addressed.

(v) Identification of potential source(s) of Outcomes Payments from public or private entity(ies).

(b) *Transaction Structuring:* The Intermediary must provide support for structuring the CTE PFS agreement for up to three Local CTE Sites with feasible CTE PFS Projects. Activities may include, but are not limited to:

(1) Providing overall PFS Project coordination and support to—

(i) Design CTE PFS Project work plan, timeline, and task list;

(ii) Coordinate planning and meetings of relevant CTE PFS Project stakeholders;

(iii) Manage all project elements to meet shared timeline of CTE PFS Project stakeholders;

(iv) Develop a plan to train and provide technical assistance for selected Local CTE Sites to provide services, including engaging and educating providers to ensure that expectations of their role in the CTE PFS Project are clear;

(v) Assess the strength, expertise, and capacity of selected Local CTE Sites to provide services, including quantitative and qualitative assessment of respondents' track records, operating models, strength of outcomes, and compatibility with the CTE PFS Project;

(vi) Address Local CTE Site performance concerns or capacity gaps;

(vii) Coordinate selection of qualified Independent Evaluator(s);

(viii) Coordinate or lead design of key project components, including detailed service provision, duration of services, outcome measures and monitoring, and PFS intervention evaluation design; and

(ix) Ensure that all data necessary to identify the target population and measure outcomes will be made available by the government entity or other entity, and shared among relevant stakeholders, including the Intermediary and Independent Evaluator on a timely basis and in accordance with all applicable confidentiality and Federal, State and local privacy laws and requirements.

(2) Raising capital and developing capital structure by:

(i) Identifying sources of funding for Outcomes Payments (including sources beyond Federal funds);

(ii) Conducting Financial Modeling of the transaction, including analysis of possible payment terms and transaction structures;

(iii) Developing an investment and structure, regarding Outcomes Payments, that mitigates relevant risks and establishes appropriate incentives;

(iv) Developing relevant documentation, such as a term sheet, that includes Outcomes Payments, pricing, payment schedules, and capital structure; and

(v) Marketing the CTE PFS Project to Investors in order to raise capital commitments necessary to fund the CTE PFS Project.

(3) Mediating and facilitating an agreement between each of the CTE PFS Partners to the transaction by:

(i) Coordinating the negotiation of all parties around economic and contract terms;

(ii) Developing and finalizing all contracts and supplementary documentation, including offering or loan documents that may be relevant and working with legal counsel as appropriate; and

(iii) Closing the Intermediary's CTE PFS work/activities with Local CTE Sites.

(4) Proposing additional or alternative strategies under any of the above task areas which further the purposes of the CTE PFS TA Program.

(5) Documenting and disseminating lessons learned from the transaction structuring phase.

Public Use of Data and Documentation: The Intermediary and the four local CTE Sites must be willing to make data and documentation publicly available for the purposes of transparency and knowledge sharing, including making the CTE PFS Agreements publicly available. To facilitate knowledge sharing and enable other communities to learn from the Local CTE Sites' PFS experiences, the Department intends to post publicly on its Web site Feasibility Studies, lessons learned, best practices, documents created for transactions such as contracts, and other tools created throughout the PFS phases, while adhering to the confidentiality needs of program participants as well as local, State, and Federal laws.

Participation in a Department-Sponsored Program Evaluation: As a condition of the cooperative agreement, the Intermediary will be required to cooperate with all Department staff, contractors, or designated grantees performing research or evaluation studies funded by the Department. The Intermediary must establish any necessary agreements with the four Local CTE Sites to ensure that the Intermediary is able to completely respond to and cooperate with Department staff, contractors, or designated grantees performing research or evaluation studies funded by the Department.

Cooperative Agreement: The Secretary plans to make a grant award under the terms of a cooperative agreement to a Grantee (Intermediary) as defined in this notice. The Secretary expects to have substantial involvement with the Grantee during the performance of the funded project, including, but not limited to:

(a) Direct involvement in the review and approval of project activities;

(b) Substantial input into the final selection and approval of the Local CTE Sites;

(c) Continued and regular participation in project activities;

(d) Halting a project activity if detailed performance specifications or requirements are not met;

(e) Substantial input into the final selection and approval of the three Local CTE Sites that will receive transaction structuring TA; and

(f) Reviewing and approving one stage of work before subsequent work may begin, especially between the Feasibility Analysis and transaction structuring phases of the CTE PFS Projects.

Milestone Reporting and Documentation: Under the cooperative agreement, at a minimum, the Intermediary must submit the following reports and documents according to the timelines noted below:

(a) Within two months of the grant award, the Intermediary's plan to implement an Open and Fair Competition to select four Local CTE Sites (selection plan) to receive Feasibility Study technical assistance for approval by the Department. This selection plan must:

(1) Include the key eligibility criteria for selecting the Local CTE Sites;

(2) Identify the acceptable level of evidence for the potential CTE PFS project's proposed intervention, given that all proposed CTE PFS projects must include interventions that have at least a preliminary level of evidence;

(3) Detail how the selection process will:

(i) Comply with requirements for an Open and Fair Competition, and

(ii) Ensure that appropriate conflict of interest policies are in place for selection of Local CTE Sites;

(4) Provide the timeline for implementing the selection plan, including milestones for releasing the Intermediary's request for proposals or other competition document and selecting local CTE Sites.

(b) At least one month in advance of releasing a competition notice for Local CTE Sites interested in implementing a Feasibility Study, the Intermediary must submit a finalized detailed plan to the U.S. Department of Education for approval containing the required information in paragraph (a) of this section.

(c) Prior to selecting the four Local CTE Sites, the Intermediary must submit a report on the Intermediary's Open and Fair Competition implementing the approved selection plan recommending four Local CTE Sites to receive feasibility technical assistance for approval by the Department. The report should include:

(1) A description of the evidence demonstrating that the Service Delivery Model is likely to achieve the stated outcomes; and

(2) A summary of the experience of the Local CTE Site delivering the proposed intervention or a similar intervention, or other contracted intervention initiated by the Local CTE Site, or other evidence demonstrating the service provider has the expertise necessary to deliver the proposed intervention.

(d) Provide a plan and timeline, including milestones, for completing the Feasibility Studies for the four Local CTE Sites within 24 months of the grant award identifying each of the critical steps for approval by the Department.

(e) Provide quarterly reports to the Department on the Intermediary's progress developing and completing CTE PFS Feasibility Studies for the four Local CTE Sites consistent with the approved plan, timeline and critical steps in paragraph (d).

(f) Complete, review, and disseminate the four written CTE PFS Feasibility Studies within 24 months of the grant award consistent with program requirements.

(g) Where a Feasibility Study concludes that a CTE PFS Project is not viable or appropriate, an explanation of why the project is not feasible and suggested alternatives to the CTE PFS Project or next steps to ready the Local CTE Site for the CTE PFS Project to become viable.

(h) Submit a plan to verify the results of the Feasibility Studies and outline the selection criteria that will be used to determine which entities will receive transaction structuring technical assistance.

(i) Provide a plan and timeline, including milestones, for the transaction structuring phase, identifying each of the critical steps for approval by the Department.

(j) Provide quarterly reports to the Department on the Intermediary's progress developing and completing the transaction structuring Phase consistent with the approved timeline and critical steps in paragraph (h).

(k) A fully-structured PFS Agreement that may be used for each Local CTE Site selected to receive transaction structuring technical assistance.

(l) If development of a fully-structured PFS Agreement was not possible, a report outlining what the barriers were, what lessons were learned, and recommendations to either prepare the site for PFS implementation or viable alternatives to PFS.

Priority: This notice includes one absolute priority. We are establishing this priority for the FY 2016 grant competition, and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priority: This priority is an absolute priority. Under 34 CFR 75.105(c)(2)(i), we consider only applications that meet this absolute priority.

This priority is:

Cash or In-Kind Matching: To meet this priority an applicant must provide a 10 percent Cash or In-Kind Match of the total amount of the grant. Cash or In-Kind matching will increase overall resources and enhance broad-based support for the CTE PFS TA Program. Applicants must verify that they will provide a 10 percent Cash or In-Kind Match of the total amount of the grant by submitting: (1) A letter of intent with their application; and (2) a letter of commitment that must be received no later than 4:30:00 p.m., Washington, DC time September 15, 2106 in a PDF (Portable Document) read-only, non-modifiable format submitted by email with the subject line "CTE PFS TA Program Matching Cash or In-Kind Contributions—Letter of Commitment", addressed to *Len.Lintner@ed.gov.*

The applicant must demonstrate matching by providing either or a combination of both:

(a) Cash toward meeting their matching costs of the total award of the CTE PFS TA Program grant, by providing the following:

(1) Documentation that the applicant's organization has either cash-on-hand or commitments from organizations for the matching funds; and

(2) A statement from the Chief Financial Officer or other relevant officer that the applicant's organization has established a reserve of committed funds for the CTE PFS Project.

(b) In-kind, non-cash contributions calculated consistent with 2 CFR 200.306 toward meeting their matching costs of the total award of the CTE PFS TA Program grant by providing one or a combination of the following:

(1) Evidence of commitments in the form of equipment, supplies, and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to benefit the CTE PFS TA Program;

(2) Evidence of third-party commitments for the monetary value of time contributed by professional and technical personnel and other skilled labor directly benefiting and specifically identifiable to benefit the CTE PFS TA Program; and/or

(3) Evidence of other forms of non-cash third-party commitments directly benefiting and specifically identifiable to benefit the CTE PFS TA Program.

Application Requirements: The applicant must:

(a) Provide a Theory of Action for the CTE PFS TA Program for Underserved, High-Need Youth.

(b) Provide a statement of organizational capacity to conduct PFS Feasibility Studies and transaction structuring, and to work with CTE, including:

(1) A description of the project leadership and team, including qualifications and experience coordinating PFS programs and working with CTE; and

(2) A description of the project leadership and team's experience selecting local sites that have a high likelihood of completing the Feasibility Analysis phase and moving to the transaction structuring phase.

(c) Propose a preliminary plan for an Open and Fair Competition to select

Local CTE Sites to receive technical assistance.

(d) Provide a preliminary work plan for conducting technical assistance for the Feasibility Analysis and transaction structuring phases at the four Local CTE Sites. While each Local CTE Site selected will have different needs and priorities, the applicant must describe the overall tasks and processes that will be undertaken in each of the Feasibility Study and transaction structuring phases.

(e) Provide a budget and budget narrative for each of the two phases of the CTE PFS Project—Feasibility Study and transaction structuring, including any planned cash or in-kind match consistent with the absolute priority.

Definitions: We are establishing these definitions for the FY 2016 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1). The definition of "Local Government" is from the Uniform Administrative Requirements, Cost Principles and Audit Requirements For Federal Awards at 2 CFR 200.64; the definitions of "Logic Model," "Strong Theory," and "Theory of Action" are from Education Department General Administrative Regulations (EDGAR) at 34 CFR 77.1(c); the definition of "State" is from Sec. 3(30) of Perkins IV; and the definition of "Tribal Government" is from Sec. 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(c). This competition uses the following definitions for the key terms included in this notice:

Benefits means fiscal and other value to the public sector and society as a result of achieving the Outcome Measures through the implementation of the intervention for Underserved, High-Need Youth. Benefits may include cost savings, cost avoidance, cost-effectiveness, and positive societal benefits.

Cost-Benefit Analysis means an analysis that compares the costs of an intervention (for example) with the Benefits that will result from achieving the Outcome Measures, including a framework and description of the process used for estimating Benefits that would result from implementation of the evidence-based CTE program for Underserved, High-Need Youth.

CTE Pay for Success (CTE PFS) Agreement means a multiparty agreement: (1) Which, when executed, delivers or scales an innovative and Evidence-based Intervention intended to improve one or more outcomes, and in which ultimate payment to the Local CTE Site is made only if the outcome(s) is achieved at predetermined target levels, as documented by an Independent Evaluator, and (2) to which the following entities are signatories: (i) Local CTE Site(s); (ii) Outcomes Payor(s); and may include (iii) Intermediary/project coordinator or legal entity managing this Agreement created by the Intermediary.

CTE Pay for Success (CTE PFS) Partnership includes a public or private entity that pays for outcomes; an Intermediary; and an Independent Evaluator. A CTE PFS Partnership may also include one or more Local CTE Sitesand Investor(s).

Evidence-based Interventions are those which have objective levels of research support consistent with the guidelines established by the Department's What Works Clearinghouse.

Feasibility Study means a written report assessing the suitability of an intervention for PFS. A Feasibility Study includes, at a minimum—

(a) A description of the High-Quality CTE program model to be implemented through PFS that includes, at a minimum, how the intervention is likely to improve student outcomes, based on quantitative, qualitative, or theoretical evidence; the goals, objectives, and outcomes to be achieved by the proposed CTE program which are clearly specified and measurable and will demonstrate student success; and how the intervention is appropriate to, and will successfully address, the needs of Underserved, High-Need Youth;

(b) Identification of one or more clearly specified and measurable Outcome Measures;

(c) A Cost-Benefit Analysis;

(d) Any statutory, legal or other barriers to implementing PFS and how they will be addressed; and

(e) Identification of potential sources of Outcomes Payments from a government entity or other sources.

Financial Model means a quantitative model that shows public sector value (or value to other non-governmental outcomes payors), including cost savings, cost avoidance or efficiency, and societal benefit and links the costs of implementation of the CTE PFS Project that are covered, in whole or in part, by the Investors to the amounts and timing of Outcomes Payments that are made by a government entity.

Fiscal Agent is the entity that will be fiscally responsible for the grant award. It may be the Intermediary or a partner.

Grantee refers to the Intermediary that is awarded the grant for the CTE PFS TA Program, consistent with the definition provided in this notice.

High-Quality Career and Technical (CTE) Program means a program that—

(a) Supports career pathways in in-demand industry sectors and occupations and that provide opportunities for students to prepare for college and careers;

(b) Provides students with information about occupations in in-demand industry sectors or occupations and may offer career exploration activities as early as seventh grade;

(c) Offers a non-duplicative, structured sequence of courses that begin at the secondary level and lead, as applicable, to an industry-recognized credential (in sectors where those credentials exist and are appropriate) and to a postsecondary certificate or degree that is needed for placement in an in-demand occupation that leads to economic self-sufficiency;

(d) Provides students with the academic, employability, and technical, skills that employers require for entry into occupations in in-demand industry sectors or occupations;

(e) Offers opportunities for students to earn academic credit and postsecondary credit for completing high school career and technical education courses;

(f) Provides all participating students with work-based learning;

(g) Provides supplemental services to participating students who are members of underserved populations and provides support services to all participating students to ensure that all students have equitable access to career and technical education programs, in addition to equitable opportunities to participate and succeed in these programs; and

(h) Offers opportunities for participating students to develop leadership skills.

High-Quality Pay for Success (PFS) Project means a PFS Project that includes:

(a) A plan for addressing a well-defined problem and the needs of an associated target population;

(b) A service delivery strategy that is managed, coordinated, and guided by the Local CTE Site, is flexible and adaptive to the target problem and population, and has a robust, rigorous evidence base or a compelling theory of change with pre- and post-intervention outcomes;

(c) One or more well-defined, achievable potential outcome target(s) and associated payments that are a significant improvement on the current condition of the target population and have been agreed to by all required project partners;

(d) A plan for Rigorous Evaluation;

(e) A financial model that shows public sector value (or value to other non-governmental outcomes payors), including cost savings, cost avoidance or efficiency, and societal benefit and tracks effects of the project on relevant Federal, State, and local funding sources;

(f) A commitment from an individual or entity to act as an outcomes payor (whose Outcomes Payments may be directed to Investors if they have covered, in part or in whole, costs associated with delivering the intervention);

(g) If needed, a binding commitment of funds from one or more independent Investors to cover all operating costs of the intervention, including administrative and overhead costs of any intermediary; and

(h) A legal agreement and any associated necessary agreements that incorporate all elements above.

Independent Evaluator means an independent entity that rigorously evaluates whether the intervention achieved the outcome(s) sought.

Independent Investor means an individual, entity, or group thereof that provides upfront capital to cover the operating costs and other associated costs, in part or whole, of the intervention delivered by the Local CTE Site and is not involved in the design or implementation of the PFS CTE project or has a stake in the results from the evaluation.

Intermediary is a technical assistance entity that facilitates and manages the PFS TA project and contracting process. Under this program the Intermediary serves as the project facilitator between the parties in the first two phases of the PFS project, Feasibility Study and transaction structuring. Responsibilities may include but are not limited to: coordinating the development and execution of legal agreements, building a Financial Model to guide the terms of the legal agreements, and raising capital from Investors.

Investor means an individual, entity, or group thereof that provides upfront capital to cover the operating costs and other associated costs, in part or whole, of the CTE intervention delivered by the Local CTE Sites.

Local CTE Site means an eligible recipient under section 3(14) of Perkins IV. Section 3(14) defines "eligible recipient" as: "(A) a local educational agency (including a public charter school that operates as a local educational agency), an area career and technical education school, an educational service agency, or a consortium, eligible to receive assistance under section 131; or (B) an eligible institution or consortium of eligible institutions eligible to receive assistance under section 132." The Local CTE Site is the service provider which may include other contractor interventions.

Local Government means any unit of government within a State, including a—

(a) County;
(b) Borough;
(c) Municipality;
(d) City;
(e) Town;
(f) Township;
(g) Parish;
(h) Local public authority, including any public housing agency under the United States Housing Act of 1937;
(i) Special district;
(j) School district;
(k) Intrastate district;
(l) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and
(m) Any other agency or instrumentality of a multi-, regional, or intra-State or local government. (See 2 CFR 200.64).

Logic Model (also referred to as Theory of Action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.,* the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally. See EDGAR at 34 CFR 77.1(c).

Open and Fair Competition means a recruitment and selection process that is free of organizational conflicts of interest as well as noncompetitive practices among applicants that may restrict or eliminate competition or otherwise restrain trade.

Outcome Measure means an indicator of student success on which the program's impact will be calculated. It is determined using relevant program data and has defined units of measurement by which the impact can be tracked.

Outcomes Payments means, per the terms of the CTE PFS Agreement, payments that cover repayment of the principal investment and a return in the case that: (1) An Investor has covered part or all of the costs of service delivery and other associated costs, and (2) outcomes have been achieved according to an Independent Evaluator.

Payment Plan means a written plan that describes the proposed payment arrangement between the Investors, and outcomes payor and must include the timelines and payment amounts for the duration of the CTE PFS Project and the corresponding Outcome Measure that triggers the Outcomes Payment.

Rigorous Evaluation means an evaluation that will, if well-implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards without reservations or, when random assignment is not feasible, would meet What Works Clearinghouse Evidence Standards with reservations.

Service Delivery Model means a CTE program and model that is evidence-based with a track record of success or supported by Strong Theory that will serve Underserved, High-Need Youth in the Local CTE Site, including the CTE program models cited in the Background section of this notice.

State The term 'State,' unless otherwise specified, means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each outlying area. See Sec. 3(30) of Perkins IV.

Strong Theory means a rationale for the proposed process, product, strategy, or practice that includes a Logic Model. See EDGAR at 34 CFR 77.1(c).

Theory of Action (also referred to as Logic Model) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.,* the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally. See EDGAR at 34 CFR 77.1(c).

Tribal Government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Sec. 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(c)) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

Underserved, High-Need Youth refers to individuals who are at risk of educational failure or otherwise in need of special assistance and support. These individuals may include students described in section 3(29) (Special Populations) of Perkins IV, as well as students who are living in poverty, attend high-minority schools, are far below grade level, have left school before receiving a regular high school diploma, are at risk of not graduating with a diploma on time, are homeless, or have been incarcerated.

What Works Clearinghouse Evidence Standards means the standards set forth in the What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can be found at the following URL address: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act, 5 U.S.C. 553, the Department generally offers interested parties the opportunity to comment on proposed priorities, definitions and other requirements. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 114(c)(1) of Perkins IV (20 U.S.C. 2324(c)(1)) and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priority, definitions, and other requirements under section 437(d)(1) of GEPA. The priority, definitions, and other requirements will apply to the FY 2016 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition.

Program Authority: 20 U.S.C. 2324.

Applicable Regulations: (a) EDGAR in 34 CFR parts 75, 77, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant (cooperative agreement).

Estimated Available Funds: $2,000,000 to support technical assistance provided by an Intermediary to four Local CTE Sites during the Feasibility Analysis stage and three Local CTE Sites during the transaction structuring phase, if applicable.

Estimated Range of Awards: $2,000,000.

Estimated Average Size of Award: $2,000,000.

Estimated Number of Awards: One.

Note: The Department is not bound by any estimates in this notice.

Project Period: 48 months. Applicants under this competition are required to provide detailed budget information for each of the years of this project and for the total grant.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants are:

(a) Nonprofit organizations as defined in 2 CFR 200.70;

(b) Public or private institutions of higher education as defined in section 101 of the Higher Education Act of 1965;

(c) States, Local Governments, and Tribal Governments;

(d) Consortia of the above entities; or

(e) Partnerships/consortia of the above entities and a for-profit organization.

For-profit organizations may not serve as the applicant or Fiscal Agent for the grant.

2. *Cost Sharing or Matching:* The program requires cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs), or from the program office. To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.051.

To obtain a copy from the program office, contact the persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2.a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 35 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the one-page abstract, or the resumes, bibliography, letters of support, or other appendices.

Our reviewers will not read any pages of your application that exceed the page limit.

2.b. *Submission of Proprietary Information:* Given the types of projects that may be proposed, your application may include business information that the applicant considers proprietary. The Department's regulations define "business information" in 34 CFR 5.11.

Because we plan to make successful applications available to the public upon request, you may wish to request confidentiality of business information. Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4 of the Freedom of Information Act. In the appropriate Appendix section of your application, under "Other Attachments Form," please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: July 26, 2016.

Date of Pre-Application Meeting: August 2, 2016.

Deadline for Transmittal of Applications: August 25, 2016.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program. However, under 34 CFR 79.8(a), we waive Intergovernmental Review in order to make an award by September 30, 2016.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)),the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in *Grants.gov* and before you can submit an application through *Grants.gov.*

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov,* you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Providing High-Quality Career and Technical Education Programs for Underserved, High-Need Youth through a Pay For Success Model, CFDA number 84.051, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Providing High-Quality Career and Technical Education Programs for Underserved, High-Need Youth through a Pay For Success Model at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number 84.051.

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov,* we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and

the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov.*

- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov,* please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your electronic application must comply with any page-limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.

After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov,* the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov,* it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov,* please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov,* along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the *Grants.gov* system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written Statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written Statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written Statement to the Department, we must receive the faxed Statement no later than two weeks before the application deadline date.

Address and mail or fax your Statement to: Len Lintner, U.S. Department of Education, 400 Maryland Avenue SW., PCP, Room 11090, Washington, DC 20202–7241. FAX: (202) 245–7170.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.051) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.051)) 550 12th Street SW., Room 7039 Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The maximum score for all the selection criteria is 160 points. In addressing the criteria, applicants are encouraged to make explicit connections to the absolute priority and the program requirements and application requirements listed elsewhere in this notice. The selection criteria are as follows:

(a) *Need for project.* (Up to a total of 20 points) The Secretary considers the need for the proposed project. In determining the need, the Secretary considers—

(1) The magnitude of the need for the services to be provided or the activities to be carried out by the Intermediary to ensure Underserved, High-Need Youth are served by the Local CTE Sites (up to 10 points); and

(2) The likelihood that the proposed project will result in system change or improvement (up to 10 points);

(b) *Quality of the Proposed Local CTE Site Selection Process.* (Up to a total of 30 points) The Secretary considers the quality of the selection process for Local CTE Sites that will receive technical assistance from the Intermediary. In determining the quality of the selection process, the Secretary considers:

(1) The extent to which the selection process is open and fair (up to 5 points);

(2) The extent to which the applicant clearly defines the goals and objectives of the competition and the subsequent delivery of services (up to 5 points);

(3) The extent to which the selection criteria for the competition is expected to result in Local CTE Sites from a mix of geographic locations—urban, suburban, and rural (up to 5 points);

(4) The extent to which the selection criteria for the competition is expected to enhance the likelihood that the Local CTE Sites will proceed from Feasibility Study to transaction structuring (up to 5 points); and

(5) The extent to which the selection criteria for the competition identifies and prioritizes addressing specific gaps or weaknesses in CTE services, infrastructure, or opportunities that have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses (up to 10 points).

(c) *Quality of the Proposed Work Plan for Feasibility Study and Transaction Structuring.* (Up to a total of 30 points) The Secretary considers the quality of the work plan for the proposed project. In determining the quality of the work plan for the proposed project, the Secretary considers—

(1) The adequacy of the work plan to achieve the purposes of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (up to 15 points); and

(2) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (up to 15 points).

(d) *Adequacy of Resources.* (Up to 10 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the extent to which the costs are reasonable in relation to the objectives, design, and potential significance for the proposed project including resources committed to the Feasibility Study and transaction structuring phases, and all project deliverables;

(e) *Organization Capacity and Experience.* (up to a total of 70 points) The Secretary considers the organizational capacity and experience of the applicant. In determining the organizational capacity and experience of the applicant, the Secretary considers:

(1) The extent to which the applicant demonstrates recent and ongoing experience in performing the same or similar PFS activities as those required in this competition (the applicant may provide brief examples of PFS technical assistance or negotiations facilitated by the applicant) (up to 10 points);

(2) The extent to which the applicant can demonstrate its technical ability carrying out prior Feasibility Studies and transaction structuring activities (up to 5 points);

(3) The extent to which the applicant demonstrates experience in holding Open and Fair Competitions to select local sites for technical assistance (up to 5 points);

(4) The extent to which the applicant demonstrates experience in choosing local sites for a Feasibility Study that have subsequently progressed to transaction structuring (up to 5 points);

(5) The extent to which the applicant demonstrates its experience with

coordinating and managing PFS contracts, Financial Modeling and estimation of return on investment and Cost-Benefit Analysis, marketing PFS contracts to potential Investors, raising capital, and developing contracts and related supplementary documentation (up to 5 points);

(6) The extent to which the applicant has experience with selecting, coordinating, and managing a third-party evaluator of a PFS project, including coordinating between an evaluator and other project stakeholders to ensure that the evaluation and service delivery designs are compatible (up to 5 points);

(7) The extent to which the applicant has knowledge about CTE programs, and experience in providing technical assistance on effective CTE programs (up to 5 points);

(8) The extent to which the applicant presents a qualified roster of staff members, including management staff, board members, and partners that have demonstrated experience, capacity and a track record to effectively implement the proposed project, including at least one staff member with experience in developing and implementing evidence-based CTE programs (up to 5 points);

(9) The extent to which the applicant describes the roles and responsibilities of each team member, ensuring all key facets of the project have clear owners with appropriate experience (up to 5 points);

(10) The extent to which the applicant identifies the proposed project lead(s) and demonstrates their expertise, based on past experience in PFS or similar social financing projects (up to 5 points); and

(11) The extent to which the applicant has experience with financial and project management (up to 5 points).

(13) The extent to which the applicant has experience evaluating evidence and selecting evidence-based strategies (up to 5 points).

(14) The extent to which the applicant has experience providing TA for carrying out quality data collection/matching and developing relevant, high-quality metrics for success (up to 5 points).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. Risk Assessment and *Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or Grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance for the CTE PFS Project. Under GPRA, Federal departments and agencies must clearly describe the goals and objectives of their programs, identify resources and actions needed to accomplish these goals and objectives, develop a means of measuring progress made, and regularly report on their achievement. One important source of program information is the annual project evaluation conducted under individual grants. To determine the overall effectiveness of projects funded under this competition, the Grantee must be prepared to measure and report on the following measures of effectiveness:

(a) The number and percentage of Local CTE Sites that have a complete Feasibility Study within 24 months of the project period.

(b) The number and percentage of Feasibility Studies that conclude that CTE PFS approaches are viable or that identify feasible alternatives if PFS is not viable.

(c) The number and percentage of successfully completed structured transactions within the project period that are ready to move to project implementation.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for its proposed project. The Grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Len Lintner, U.S. Department of Education, 400 Maryland Avenue SW., Room PCP–

11090, Washington, DC 20202. Telephone: (202) 245–7741 or by email: *Len.Lintner@ed.gov.*

If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Johan E. Uvin,

Deputy Assistant Secretary Delegated the Duties of the Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2016–17657 Filed 7–25–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0086]

Agency Information Collection Activities; Comment Request; Middle Grades Longitudinal Study of 2017–18 (MGLS:2017) Operational Field Test (OFT) and Recruitment for Main Study Base-year

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED),

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 26, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0086. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Middle Grades Longitudinal Study of 2017–18 (MGLS: 2017) Operational Field Test (OFT) and Recruitment for Main Study Base-year.

OMB Control Number: 1850–0911.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 33,374.

Total Estimated Number of Annual Burden Hours: 14,235.

Abstract: The Middle Grades Longitudinal Study of 2017–18 (MGLS:2017) is the first study conducted by the National Center for Education Statistics (NCES) to follow a nationally-representative sample of students as they enter and move through the middle grades (grades 6–8). The data collected through repeated measures of key constructs will provide a rich descriptive picture of the academic experiences and development of students during these critical years and will allow researchers to examine associations between contextual factors and student outcomes. The study will focus on student achievement in mathematics and literacy along with measures of student socioemotional wellbeing and other outcomes. The study will also include a special sample of students with different types of disabilities that will provide descriptive information on their outcomes, educational experiences, and special education services. Main Study Base-year data for the MGLS:2017 will be collected from a nationally-representative sample of 6th grade students beginning in January 2018, with annual follow-ups beginning in January 2019 and in January 2020 when most of the students in the sample will be in grades 7 and 8, respectively. In preparation for the national data collection, referred to as the Main Study, the data collection instruments and procedures must be field tested. This request is to conduct three components of the study: (1) The MGLS:2017 Operational Field Test (OFT) data collection from January to June 2017; (2) the recruitment of schools for the Main Study Base-year beginning in January 2017; and (3) the tracking of OFT students and associated recruitment of schools beginning in summer 2017 in preparation for the first follow-up OFT data collection. An Item Validation Field Test (IVFT) was conducted in the winter/spring of 2016 to determine the psychometric properties of assessment and survey items and the predictive potential of items so that valid, reliable, and useful assessment and survey instruments can be composed for the Main Study. The primary purpose of the OFT is to: Obtain information on recruiting, particularly for students in three focal

IDEA-defined disability groups; obtain a tracking sample that can be used to study mobility patterns in subsequent years; and test protocols and administrative procedures. The OFT will inform the materials and procedures for the main study base year and follow-up data collections. Because the OFT recruitment will still be ongoing at the time this request is approved, the burden and materials from the MGLS:2017 Recruitment for the 2017 OFT request (OMB# 1850–0911 v. 6,9,10) are being carried over in this submission.

Dated: July 20, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–17517 Filed 7–25–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1649–000]

California Independent System Operator Corporation; Notice Rescheduling Technical Conference

July 18, 2016.

The technical conference originally scheduled for September 30, 2016, in the above-referenced proceeding, is hereby rescheduled to convene on September 16, 2016, at 10:00 a.m. (Eastern Time). It will occur at the Commission's offices at 888 First Street, NE., Washington, DC 20426.[1]

Dated: July 18, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–17519 Filed 7–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2169–000]

Algonquin SKIC 20 Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Algonquin SKIC 20 Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 8, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 18, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17530 Filed 7–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–1088–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Report Filing: Supplemental Filing to RP16–1088.
Filed Date: 7/14/16.
Accession Number: 20160714–5000.
Comments Due: 5 p.m. ET 7/26/16.

Docket Numbers: RP16–1090–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agmt—EQT to be effective 7/8/2016.
Filed Date: 7/13/16.
Accession Number: 20160713–5106.
Comments Due: 5 p.m. ET 7/25/16.

Docket Numbers: RP16–1091–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: S–2 Tracker Effective 8–1–2016 to be effective 8/1/2016.
Filed Date: 7/14/16.
Accession Number: 20160714–5023.
Comments Due: 5 p.m. ET 7/26/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–979–001.
Applicants: Algonquin Gas Transmission, LLC.
Description: Compliance filing AGT Cleanup RP16–979 Compliance Filing to be effective 7/1/2016.
Filed Date: 7/12/16.
Accession Number: 20160712–5048.
Comments Due: 5 p.m. ET 7/25/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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[1] See the *Notice of Technical Conference* issued on July 14, 2016, for additional details regarding this conference.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17528 Filed 7–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2194–000]

Clinton Battery Utility, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Clinton Battery Utility, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 8, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 19, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17531 Filed 7–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–102–000]

Citizens Energy Corporation; Notice of Petition for Declaratory Order

Take notice that on July 18, 2016, pursuant to rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,[1] section 219 of the Federal Power Act,[2] and Order No. 679,[3] Citizens Energy Corporation (Citizens or Petitioner), on behalf of itself and its wholly owned subsidiary Citizens Power Connect, LLC, filed a petition for a declaratory order requesting the Commission authorize two rate treatments in connection with a new high voltage transmission project that Citizens is partnering with Pacific Gas and Electric and MidAmerican Central California Transco, LLC., to develop and finance, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordancewith Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions inlieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on August 17, 2016.

Dated: July 19, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–17523 Filed 7–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13212–005]

Kenai Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Application for Original License for Major Project —Unconstructed.

b. *Project No.:* P–13212–005.

c. *Date filed:* April 18, 2016.

d. *Applicant:* Kenia Hydro, LLC.

e. *Name of Project:* Grant Lake Hydroelectric Project.

f. *Location:* On Grant Creek, near the Town of Moose Pass, Kenai Peninsula

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[1] 18 CFR 385.207.

[2] 16 U.S.C. 791a—828c, 824s.

[3] *Promoting Transmission Investment through Pricing Reform,* Order No. 679, 116 FERC 61,057, *order on reh'g,* 117 FERC 61,345 (2006), *order on reh'g,* 119 FERC 61,062 (2007) (Order No. 679).

Borough, Alaska. The proposed project would occupy 1,741.3 acres of federal land within the Chugach National Forest managed by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mikel Salzetti, Manager of Fuel Supply & Renewable Energy Development, 280 Airport Way, Kenai, AK 99611. (907) 283–2375.

i. *FERC Contact:* Kenneth Hogan, (202) 502–8434; *Kenneth.Hogan@ferc.gov.*

j. Deadline for filing motions to intervene and protests and requests for cooperating agency status: 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file filing motions to intervene and protests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–13212–005.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The proposed Grant Lake Hydroelectric Project would consist of: (1) An intake structure within Grant Lake; (2) a 3,300-foot-long water conveyance; (3) a 72-inch-diameter, 150-feet-long, welded steel penstock; (4) a power house containing two 2.5 megawatt Francis turbine/generator units; (5) a 95-foot-long open channel tailrace; (6) a 3.6-acre tailrace detention pond; (6) a 1.1-mile-long, 115-kilovolt transmission line; and (7) appurtenant facilities. The project is estimated to generate an average of 18,600 megawatt hours (MWh) annually.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: July 19, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–17521 Filed 7–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–128–000.
Applicants: Solverde 1, LLC.
Description: Solverde 1 Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 7/15/16.
Accession Number: 20160715–5247.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: EG16–129–000.
Applicants: Antelope DSR 1, LLC.
Description: Antelope DSR 1 Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 7/15/16.
Accession Number: 20160715–5248.
Comments Due: 5 p.m. ET 8/5/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–2239–004.
Applicants: NextEra Energy Transmission West, LLC.
Description: Compliance filing: NextEra Energy Transmission West, LLC Compliance Filing to be effective 10/20/2015.
Filed Date: 7/18/16.
Accession Number: 20160718–5133.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–2194–000.
Applicants: Clinton Battery Utility, LLC.
Description: Baseline eTariff Filing: Clinton Battery Utility, LLC MBR Application to be effective 8/15/2016.
Filed Date: 7/14/16.
Accession Number: 20160714–5175.
Comments Due: 5 p.m. ET 8/4/16.

Docket Numbers: ER16–2224–000.
Applicants: Solverde 1, LLC.
Description: Baseline eTariff Filing: Solverde 1, LLC MBR Tariff to be effective 7/19/2016.
Filed Date: 7/18/16.

Accession Number: 20160718–5074.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–2225–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2016–07–18 RSG Rhg Compliance Filing to be effective 4/1/2011.
Filed Date: 7/18/16.
Accession Number: 20160718–5093.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–2226–000.
Applicants: McHenry Battery Storage, LLC.
Description: Baseline eTariff Filing: McHenry Battery Storage Initial Baseline MBR Application & Notice Waiver Request to be effective 7/19/2016.
Filed Date: 7/18/16.
Accession Number: 20160718–5097.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–2227–000.
Applicants: Kelly Creek Wind, LLC.
Description: Baseline eTariff Filing: Kelly Creek Wind Initial Baseline MBR Application Filing to be effective 9/17/2016.
Filed Date: 7/18/16.
Accession Number: 20160718–5132.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–2228–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3354, Queue No. X2–054 to be effective 9/13/2016.
Filed Date: 7/18/16.
Accession Number: 20160718–5140.
Comments Due: 5 p.m. ET 8/8/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 18, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17526 Filed 7–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9842–006]

Mr. Ray F. Ward; Notice Of Availability Of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a new license for the Ward Mill Hydroelectric Project, located on the Watauga River near Boone, Watauga County, North Carolina, and has prepared a draft Environmental Assessment (draft EA) for the project. The project would not occupy federal land.

In the draft EA, Commission staff analyze the potential environmental effects of relicensing the project and conclude that continued project operation under a new license, with appropriate measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the draft EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free number at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, please contact Adam Peer by telephone at (202) 502–8449 or by email at *Adam.Peer@ferc.gov.*

Dated: July 18, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–17520 Filed 7–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. Cp16–478–000]

Gulf South Pipeline Company, LP; Notice of Application

Take notice that on July 11, 2016, Gulf South Pipeline Company, LP (Gulf South), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) requesting authorization to construct and operate its St. Charles Parish Expansion Project to provide 133,333 dekatherms per day to serve Entergy Louisiana, LLC. Specifically, Gulf South proposes to construct: (i) A new 5,000 horsepower compressor station near Montz, Louisiana (Montz Compressor Station); and (ii) approximately 900 ft of new 16-inch-diameter pipeline, all facilities located in St. Charles and St. John the Baptist Parishes, Louisiana. Gulf South estimates the cost of the St. Charles Parish Expansion Project to be $29,721,360, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application may be directed to J. Kyle Stephens, Vice President of Regulatory Affairs, Gulf South Pipeline Company, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, by telephone at (713) 479–8252, by facsimile at (713) 479–1745 or by email to *kyle.stephens@bwpmlp.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice, the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit five copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and five copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on August 8, 2016.

Dated: July 18, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–17522 Filed 7–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1257–006; ER10–1258–006; ER11–3117–002.
Applicants: Wabash Valley Power Association, Inc., Wabash Valley Energy Marketing, Inc., Lively Grove Energy Partners, LLC.
Description: Notice of Change of Status of Wabash Valley Power Association, et al.
Filed Date: 7/18/16.
Accession Number: 20160718–5219.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER10–2575–008.
Applicants: Watson Cogeneration Company.
Description: Updated Market Power Analysis of Watson Cogeneration Company.
Filed Date: 7/18/16.
Accession Number: 20160718–5197.
Comments Due: 5 p.m. ET 9/16/16.

Docket Numbers: ER16–328–002; ER12–952–003; ER13–1141–002; ER13–1142–002; ER13–1143–003; ER13–1144–003; ER11–4027–007; ER10–2196–002; ER11–4028–007; ER12–1275–002; ER16–918–001; ER15–1657–003.
Applicants: Cogentrix Virginia Financing Holding Company, LLC, Essential Power, LLC, Essential Power Massachusetts, LLC, Essential Power Newington, LLC, Essential Power OPP, LLC, Essential Power Rock Springs, LLC, James River Genco, LLC, Lakewood Cogeneration, L.P., Portsmouth Genco, LLC, Red Oak Power, LLC, Rhode Island State Energy Center, LP, SEPG Energy Marketing Services, LLC.
Description: Notice of Non-Material Change in Status of Cogentrix Virginia Financing Holding Company, LLC, et al.
Filed Date: 7/18/16.
Accession Number: 20160718–5201.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–1483–001.
Applicants: California Independent System Operator Corporation.
Description: Tariff Amendment: 2016–07–18 Frequency Response Deficiency Letter Response to be effective 8/15/2016.
Filed Date: 7/18/16.
Accession Number: 20160718–5169.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–1791–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to 5/26/16 Filing of Revisions to MISO/PJM JOA re CMP–ICP Baseline to be effective 7/25/2016.
Filed Date: 7/19/16.
Accession Number: 20160719–5029.
Comments Due: 5 p.m. ET 8/9/16.

Docket Numbers: ER16–2229–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 642 3rd Rev—NITSA with General Mills Operations, LLC to be effective 9/1/2016.
Filed Date: 7/18/16.
Accession Number: 20160718–5160.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–2230–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA No. 3388 and ICSA No. 3409 Queue Position #T107, X3–004 & Y2–01 to be effective 11/20/2012.
Filed Date: 7/19/16.
Accession Number: 20160719–5023.
Comments Due: 5 p.m. ET 8/9/16.

Docket Numbers: ER16–2231–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: Revisions to Market-Based Rate Tariff to be effective 9/18/2016.
Filed Date: 7/19/16.
Accession Number: 20160719–5024.
Comments Due: 5 p.m. ET 8/9/16.

Docket Numbers: ER16–2232–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 20160719_Production Wind Credit to be effective 9/16/2016.

Filed Date: 7/19/16.
Accession Number: 20160719–5027.
Comments Due: 5 p.m. ET 8/9/16.

Docket Numbers: ER16–2233–000.
Applicants: Arizona Public Service Company.
Description: Tariff Cancellation: Partial Cancellation of Rate Schedule No. 32, Service Schedule E to be effective 9/18/2016.
Filed Date: 7/19/16.
Accession Number: 20160719–5051.
Comments Due: 5 p.m. ET 8/9/16.

Docket Numbers: ER16–2234–000.
Applicants: EF Kenilworth LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 7/20/2016.
Filed Date: 7/19/16.
Accession Number: 20160719–5055.
Comments Due: 5 p.m. ET 8/9/16.

Docket Numbers: ER16–2235–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2016–07–19_SA 2930 ITCTransmission-Sugar Creek Solar GIA (J419) to be effective 7/20/2016.
Filed Date: 7/19/16.
Accession Number: 20160719–5078.
Comments Due: 5 p.m. ET 8/9/16.

Docket Numbers: ER16–2236–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: § 205(d) Rate Filing: FERC Rate Schedule No. 24, Van Tyle IFA, 1.0.0 to be effective 5/5/2016.
Filed Date: 7/19/16.
Accession Number: 20160719–5095.
Comments Due: 5 p.m. ET 8/9/16.

Docket Numbers: ER16–2237–000.
Applicants: Wabash Valley Power Association, Inc.
Description: § 205(d) Rate Filing: Amendments to Rate Schedules to be effective 9/19/2016.
Filed Date: 7/19/16.
Accession Number: 20160719–5103.
Comments Due: 5 p.m. ET 8/9/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 19, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17527 Filed 7–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–152–000.
Applicants: Little Elk Wind Project, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, Request for Expedited Consideration and Confidential Treatment of Little Elk Wind Project, LLC.
Filed Date: 7/18/16.
Accession Number: 20160718–5065.
Comments Due: 5 p.m. ET 8/8/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2432–010.
Applicants: Bayonne Plant Holding, L.L.C.
Description: Compliance filing: Bayonne Plant Holding, L.L.C. Informational Filing in ER10–2432 to be effective 10/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5080.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER10–2435–010.
Applicants: Camden Plant Holding, L.L.C.
Description: Compliance filing: Camden Plant Holding, L.L.C. Informational Filing in ER10–2435 to be effective 10/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5081.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER10–2442–010.
Applicants: Elmwood Park Power, LLC.
Description: Compliance filing: Elmwood Park Power, LLC Informational Filing in ER10–2442 to be effective 10/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5082.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER10–2444–010.
Applicants: Newark Bay Cogeneration Partnership, L.P.
Description: Compliance filing: Newark Bay Cogeneration Partnership, L.P. Informational Filing in ER10–2444 to be effective 10/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5092.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER10–2449–008.
Applicants: York Generation Company LLC.
Description: Compliance filing: York Generation Company LLC Informational Filing in ER10–2449 to be effective 10/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5104.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER10–2633–026; ER10–2570–026; ER10–2717–026; ER10–3140–026; ER13–55–016.
Applicants: Birchwood Power Partners, L.P., Shady Hills Power Company, L.L.C., EFS Parlin Holdings, LLC, Inland Empire Energy Center, LLC, Homer City Generation, L.P.
Description: Notice of Non-Material Change in Status of the GE Companies, et al.
Filed Date: 7/15/16.
Accession Number: 20160715–5227.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER10–3272–002.
Applicants: Lower Mount Bethel Energy, LLC.
Description: Compliance filing: Lower Mount Bethel Energy, LLC Informational Filing in ER10–3272 to be effective 10/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5085.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER15–1029–002.
Applicants: Chubu TT Energy Management Inc.
Description: Notice of Change in Status of Chubu TT Energy Management Inc.
Filed Date: 7/15/16.
Accession Number: 20160715–5242.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–277–004.
Applicants: Talen Energy Marketing, LLC.
Description: Compliance filing: Talen Energy Marketing Informational Filing in ER16–277 to be effective 10/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5095.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–1456–001.
Applicants: Talen Energy Marketing, LLC.
Description: Compliance filing: Talen Energy Marketing Informational Filing in ER16–1456 to be effective 10/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5097.

Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–1462–002.
Applicants: Palmco Power DE LLC.
Description: Tariff Amendment: Palmco Power DE FERC Electric Tariff to be effective 5/19/2016.
Filed Date: 7/18/16.
Accession Number: 20160718–5056; 20160718–5086.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–1464–002.
Applicants: Palmco Power ME, LLC.
Description: Tariff Amendment: Palmco Power ME FERC Electric Tariff to be effective 5/20/2016.
Filed Date: 7/18/16.
Accession Number: 20160718–5042; 20160718–5083.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–1465–002.
Applicants: Palmco Power MI LLC.
Description: Tariff Amendment: Palmco Power MI FERC Electric Tariff to be effective 5/20/2016.
Filed Date: 7/18/16.
Accession Number: 20160718–5043; 20160718–5085.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–1466–002.
Applicants: Palmco Power NH LLC.
Description: Tariff Amendment: Palmco Power NH FERC Electric Tariff to be effective 5/20/2016.
Filed Date: 7/18/16.
Accession Number: 20160718–5046; 20160718–5087.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–1467–002.
Applicants: Palmco Power VA LLC.
Description: Tariff Amendment: Palmco Power VA FERC Electric Tariff to be effective 5/20/2016.
Filed Date: 7/18/16.
Accession Number: 20160718–5036; 20160718–5088.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–1468–002.
Applicants: Palmco Power RI LLC.
Description: Tariff Amendment: Palmco Power RI FERC Electric Tariff to be effective 5/20/2016.
Filed Date: 7/18/16.
Accession Number: 20160718–5050; 20160718–5090.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–1485–002.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2016–07–15_MI–ONT PARS MISO–PJM JOA 2nd Amendment to be effective 7/28/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5164.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–1788–002.
Applicants: LE Energy, LLC.
Description: Tariff Amendment: FERC Electric MBR Tariff Application to be effective 8/1/2016.
Filed Date: 7/18/16.
Accession Number: 20160718–5009; 20160718–5069.
Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–1793–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2016–07–13_CMP Baseline Filing—Attachment LL Amendment to be effective 7/25/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5169.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–1794–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2016–07–15_CMP Baseline Filing—RS 8 MISO-Manitoba Hydro SOA Amendment to be effective 7/25/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5177.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–1795–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2016–07–15_CMP Baseline Filing—RS 46 Minnkota-MISO Coor Opr Agr Amendment to be effective 7/25/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5176.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–1797–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2016–07–15_CMP Baseline Filing—MISO–SPP JOA Amendment to be effective 7/25/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5175.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–1798–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2016–07–15_CMP Baseline Filing—MISO–PJM JOA Amendment to be effective 7/25/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5179.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2202–000.
Applicants: Montour, LLC.
Description: Compliance filing: Montour, LLC Informational Filing In ER15–2187 to be effective 10/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5087.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2203–000.
Applicants: Montour, LLC.
Description: Compliance filing: Montour, LLC Informational Filing In ER15–2188 to be effective 10/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5089.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2207–000.
Applicants: H.A. Wagner LLC.
Description: Compliance filing: H.A. Wagner Informational Filing to be effective 10/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5118.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2208–000.
Applicants: Pedricktown Cogeneration Company LP.
Description: Compliance filing: Pedricktown Cogeneration Informational Filing, Waiver Request, etc. to be effective 10/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5119.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2209–000.
Applicants: Brandon Shores LLC.
Description: Compliance filing: Brandon Shores Informational Filing to be effective 10/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5121.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2216–000.
Applicants: Energetix DE, LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 8/31/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5174.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2217–000.
Applicants: Logan Generating Company, L.P.
Description: Baseline eTariff Filing: Reactive Tariff to be effective 9/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5178.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2218–000.
Applicants: North American Power Business, LLC.
Description: Baseline eTariff Filing: MBR Application to be effective 9/14/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5180.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2219–000.
Applicants: Chief Conemaugh Power, LLC.
Description: Compliance filing: Informational Filing in ER15–2187 to be effective 10/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5181.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2220–000.

Applicants: Chief Keystone Power, LLC.

Description: Compliance filing: Informational Filing in ER15–2188 to be effective 10/1/2016.

Filed Date: 7/15/16.

Accession Number: 20160715–5182.

Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2221–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA No. 3203, W3–079, among PJM, Marina Energy and JCPL to be effective 10/27/2014.

Filed Date: 7/18/16.

Accession Number: 20160718–5035.

Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–2222–000.

Applicants: Alcoa Power Generating Inc.

Description: Baseline eTariff Filing: Long Sault Division Proposed Initial Open Access Transmission Tariff to be effective 9/17/2016.

Filed Date: 7/18/16.

Accession Number: 20160718–5051.

Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–2223–000.

Applicants: Alcoa Power Generating Inc.

Description: Baseline eTariff Filing: Tapoco Division Proposed Initial Open Access Transmission Tariff to be effective 9/17/2016.

Filed Date: 7/18/16.

Accession Number: 20160718–5052.

Comments Due: 5 p.m. ET 8/8/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 85.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 18, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17525 Filed 7–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–117–000.

Applicants: Northern States Power Company, a Wisconsin corporation.

Description: Supplement to May 10, 2016 Application of Northern States Power Company, a Wisconsin corporation for Authorization under FPA Section 203 to Acquire Jurisdictional Assets.

Filed Date: 7/13/16.

Accession Number: 20160713–5137.

Comments Due: 5 p.m. ET 7/27/16.

Docket Numbers: EC16–150–000.

Applicants: Agera Energy LLC, energy.me midwest llc, Aequitas Energy, Inc.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act and Request for Confidential Treatment of Agera Energy LLC, et al.

Filed Date: 7/15/16.

Accession Number: 20160715–5074.

Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: EC16–151–000.

Applicants: Raven Power Holdings LLC, C/R Energy Jade, LLC, Sapphire Power Holdings LLC, Talen Energy Corporation.

Description: Joint Application of Talen Energy Corporation, et. al., for Approval Pursuant to Section 203 of the Federal Power Act.

Filed Date: 7/15/16.

Accession Number: 20160715–5159.

Comments Due: 5 p.m. ET 8/5/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–281–010.

Applicants: Northampton Generating Company, L.P.

Description: Notice of Non-Material Change in Status [including Pro Forma sheets] of Northampton Generating Company, L.P.

Filed Date: 7/14/16.

Accession Number: 20160714–5170.

Comments Due: 5 p.m. ET 8/4/16.

Docket Numbers: ER12–2570–012; ER13–618–011.

Applicants: Panther Creek Power Operating, LLC, Westwood Generation, LLC.

Description: Notice of Non-Material Change in Status of Panther Creek Power Operating, LLC, et al.

Filed Date: 7/14/16.

Accession Number: 20160714–5121.

Comments Due: 5 p.m. ET 8/4/16.

Docket Numbers: ER15–230–001.

Applicants: GP Energy Management LLC.

Description: Notice of Non-Material Change in Status of GP Energy Management LLC.

Filed Date: 7/14/16.

Accession Number: 20160714–5171.

Comments Due: 5 p.m. ET 8/4/16.

Docket Numbers: ER16–2198–000.

Applicants: Macquarie Energy LLC.

Description: § 205(d) Rate Filing: ME Revised MBR re Locational Exchange to be effective 9/12/2016.

Filed Date: 7/14/16.

Accession Number: 20160714–5115.

Comments Due: 5 p.m. ET 8/4/16.

Docket Numbers: ER16–2199–000.

Applicants: Entergy Arkansas, Inc.

Description: § 205(d) Rate Filing: MSS–4 Replacement Tariff Compliance to be effective 1/1/2016.

Filed Date: 7/14/16.

Accession Number: 20160714–5116.

Comments Due: 5 p.m. ET 8/4/16.

Docket Numbers: ER16–2201–000.

Applicants: Antelope DSR 1, LLC.

Description: Baseline eTariff Filing: Antelope DSR 1, LLC MBR Tariff to be effective 7/16/2016.

Filed Date: 7/15/16.

Accession Number: 20160715–5046.

Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2204–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA No. 4493, Queue No. AB1–096 to be effective 6/17/2016.

Filed Date: 7/15/16.

Accession Number: 20160715–5106.

Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2205–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: GIA & DSA Mirasol Development LLC Mirasol Murrieta 1 Project to be effective 7/16/2016.

Filed Date: 7/15/16.

Accession Number: 20160715–5109.

Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2206–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: First Amended SGIA and DSA for the SEPV Sierra Solar Project to be effective 7/16/2016.

Filed Date: 7/15/16.

Accession Number: 20160715–5117.

Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2210–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: SGIA and Service Agreement for Division Solar Project to be effective 7/16/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5124.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2211–000.
Applicants: Wisconsin Electric Power Company.
Description: § 205(d) Rate Filing: Wisconsin Electric FERC Electric Tariff Volume No. 9–2016 to be effective 9/13/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5135.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2212–000.
Applicants: Brandon Shores LLC.
Description: Compliance filing: Market-Based Rate Filing to be effective 9/13/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5155.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2213–000.
Applicants: H.A. Wagner LLC.
Description: Compliance filing: Market-Based Rate Tariff Filing to be effective 9/13/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5157.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2214–000.
Applicants: Pedricktown Cogeneration Company LP.
Description: Compliance filing: Market Based Rate Tariff Filing to be effective 9/13/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5158.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2215–000.
Applicants: ISO New England Inc.
Description: Permanent De-List Bids and Retirement De-List Bids submitted for 2020–21 Forward Capacity Auction of ISO New England Inc.
Filed Date: 7/15/16.
Accession Number: 20160715–5161.
Comments Due: 5 p.m. ET 8/5/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 15, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17524 Filed 7–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–1092–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: § 4(d) Rate Filing: SandRidge Negotiated Rate to be effective 6/7/2016.
Filed Date: 7/14/16.
Accession Number: 20160714–5052.
Comments Due: 5 p.m. ET 7/26/16.

Docket Numbers: RP16–1093–000.
Applicants: Texas Gas Transmission, LLC.
Description: Compliance filing Compliance Filing in CP15–105 (Western Ky Customer Lateral) to be effective 8/15/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5038.
Comments Due: 5 p.m. ET 7/27/16.

Docket Numbers: RP16–1094–000.
Applicants: Texas Gas Transmission, LLC.
Description: Compliance filing Compliance Filing in CP15–105–000 to Submit Neg Rate Agmts to be effective 9/1/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5039.
Comments Due: 5 p.m. ET 7/27/16.

Docket Numbers: RP16–1095–000.
Applicants: DBM Pipeline, LLC.
Description: § 4(d) Rate Filing: DBM Negotiated Rate Filing to be effective 7/15/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5105.
Comments Due: 5 p.m. ET 7/27/16.

Docket Numbers: RP16–1096–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2016–07–15 CP to be effective 7/15/2016.
Filed Date: 7/15/16.
Accession Number: 20160715–5137.
Comments Due: 5 p.m. ET 7/27/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 18, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17529 Filed 7–25–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2015–0273; FRL 9946–99–OEI]

Agency Information Collection Activities; Submitted to OMB for Review and Approval; Comment Request; TSCA Section 5(a)(2) Significant New Use Rules for Existing Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA): "TSCA Section 5(a)(2) Significant New Use Rules for Existing Chemicals" (EPA ICR No. 1188.13, OMB Control No. 2070–0038). This is a request to renew the approval of an existing ICR. EPA received two comments in response to the previously provided public review opportunity issued in the **Federal Register** on September 2, 2015 (80 FR 53151), which are addressed in this ICR. With this submission, EPA is providing an additional 30 days for public review.

DATES: Comments must be received on or before August 25, 2016.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OPPT–2015–0273, to both EPA and OMB as follows:

- To EPA online using *http://www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and
- To OMB via email to *oira_submission@omb.eop.gov.* Address comments to *OMB Desk Officer for EPA.*

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket: Supporting documents, including the ICR that explains in detail the information collection activities and the related burden and cost estimates that are summarized in this document, are available in the docket for this ICR. The docket can be viewed online at *http://www.regulations.gov* or in person at the EPA Docket Center, West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

ICR status: This ICR is currently scheduled to expire on July 31, 2016. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Under PRA, 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 5 of the Toxic Substances Control Act (TSCA) provides EPA with a regulatory mechanism to monitor and, if necessary, control significant new uses of chemical substances. Section 5 authorizes EPA to determine by rule (*i.e.*, a significant new use rule or SNUR), after considering all relevant factors, that a use of a chemical substance represents a significant new use. If EPA determines that a use of a chemical substance is a significant new use, section 5 requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the substance for that use.

EPA uses the information obtained through this collection to evaluate the health and environmental effects of the significant new use. EPA may take regulatory actions under TSCA section 5, 6 or 7 to control the activities for which it has received a SNUR notice. These actions include orders to limit or prohibit the manufacture, importation, processing, distribution in commerce, use or disposal of chemical substances. If EPA does not take action, section 5 also requires EPA to publish a **Federal Register** notice explaining the reasons for not taking action. This information collection addresses the reporting and recordkeeping requirements inherent in TSCA section 5 significant new use rules.

Respondents may claim all or part of their submission as confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Form Numbers: EPA Form No. 7710–25.

Respondents/affected entities: Entities potentially affected by this ICR are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Respondent's obligation to respond: Mandatory (40 CFR part 721).

Estimated number of respondents: 6 (total).

Frequency of response: On occasion.

Total estimated burden: 1,025 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $100,595 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 289 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase reflects EPA's updating the number of affected sites, the average number of SNUNs submitted annually, recalculating the average number of chemicals per SNUR, and correcting rounding errors in the burden estimate for completing a SNUN and rule familiarization. This change is an adjustment.

Authority: 44 U.S.C. 3501 *et seq.*

Courtney Kerwin,

Acting Director, Collections Strategies Division.

[FR Doc. 2016–17515 Filed 7–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2016–0399 and EPA–HQ–OPPT–2016–0400; FRL–9949–52]

Processes for Risk Evaluation and Chemical Prioritization for Risk Evaluation Under the Amended Toxic Substances Control Act; Notice of Public Meetings and Opportunities for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is holding two public meetings to obtain input into the Agency's development of processes for risk evaluation and chemical prioritization for risk evaluation under the Toxic Substances Control Act as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act (TSCA). Information obtained during these meetings will be considered in the Agency's development of the proposed procedural regulations required under TSCA.

DATES: *Meetings.* For the chemical evaluation process, the meeting will be held on August 9, 2016 from 9:30 a.m. to 4:30 p.m.. For the process of prioritizing chemicals for risk evaluation, the meeting will be held on August 10, 2016 from 9:30 a.m. to 4:30 p.m.

Meeting Registration. Advance registration for each meeting must be completed no later than August 4, 2016. On-site registration will be permitted, but seating and speaking priority will be given to those who pre-register by the deadline.

Reasonable Accommodations. To request accommodation of a disability, please contact the technical person listed under **FOR FURTHER INFORMATON CONTACT**, preferably by August 1, 2016, to give EPA as much time as possible to process your request.

Comments. EPA will hear oral comments at each meeting, and will accept written comments and materials submitted to the applicable docket on or before August 17, 2016.

ADDRESSES: *Meetings.* The meetings will be held in the Horizon Ballroom at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue NW., Washington, DC 20004. The meetings will also be available by remote access for registered participants. For further information, see Unit III.A. under **SUPPLEMENTARY INFORMATION.**

Meeting registration. You may register online (preferred) or in person at the meeting. To register online, go to *http://opptstakeholder.eventbrite.com.*

Comments. Submit written comments and materials, identified by the relevant docket ID number, *i.e.,* for the meeting on the process for risk evaluation, use docket ID EPA–HQ–OPPT–2016–0400; and for the meeting on the process of chemical prioritization for risk evaluation, use docket ID EPA–HQ–OPPT–2016–0399, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets in general is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Chris Blunck, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8078; email address: *Blunck.Chris@epa.gov.*

For meeting logistics or registration contact: Klara Zimmerman, Abt Associates; telephone number: (301) 634–1722; email address: *Klara_Zimmerman@abtassoc.com.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including chemical manufacturers, processors and users, consumer product companies, non-profit organizations in the environmental and public health sectors, state and local government agencies, and members of the public interested in the environmental and human health assessment and regulation of chemical substances. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of documents related to this meeting?

EPA has established two dockets for the meetings: For the meeting on the process for risk evaluation, use docket ID No. EPA–HQ–OPPT–2016–0400; and for the meeting on the process of chemical prioritization for risk evaluation, use docket ID No. EPA–HQ–OPPT–2016–0399. Both dockets are available either online at *http://www.regulations.gov* or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.* Documents and meeting information will also be available at the registration Web site.

II. Background

On June 22, 2016, President Obama signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act, which amended the Toxic Substances Control Act of 1976. The revised TSCA includes provisions that require EPA to develop by rule processes for risk evaluation and chemical prioritization for risk evaluation. Additional information on the revisions to TSCA can be found at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act.*

Risk evaluation. The meeting on August 9, 2016 will be for the purpose of gathering information for EPA consideration in developing the rule required under TSCA section 6(b)(4). Under TSCA section 6(b)(4), not later than 1 year after the date of enactment (*i.e.,* by June 21, 2017), EPA is required to establish by rule a process to conduct risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment.

Prioritization for risk evaluations. The meeting on August 10, 2016 will be for the purpose of gathering information for EPA consideration in developing the rule required under TSCA section 6(b)(1). Under TSCA section 6(b)(1), EPA must within 1 year of enactment (*i.e.,* by June 21, 2017) establish by rule a risk-based screening process, including criteria for designating chemical substances as high-priority for risk evaluations or low-priority for which risk evaluations are not warranted at the time.

III. Meeting

A. Remote Access

The meetings will be accessible remotely for registered participants. Registered participants will receive information on how to connect to the meetings prior to their start.

B. Public Participation at the Meeting

Members of the public may register to attend the meetings as observers and may also register to provide oral comments on the days of the meetings. A registered speaker is encouraged to focus on issues directly relevant to the particular meeting's subject matter. Each speaker is allowed no more than 5 minutes in each meeting. To accommodate as many registered speakers as possible, speakers may present oral comments only, without visual aids or written material. Persons registered to speak (as well as others) may submit written materials to the dockets as described under **ADDRESSES**.

IV. How can I request to participate in this meeting?

A. Registration

To attend a meeting in person or to receive remote access, please register no later than August 4, 2016, using one of the methods described under **ADDRESSES.** While on-site registration will be available, seating will be on a first-come, first-served basis, with priority given to early registrants, until room capacity is reached. The Agency anticipates that approximately 150 people will be able to attend each of the meetings in person. For registrants not able to attend in person, the meetings will also provide remote access capabilities; registered participants will be provided information on how to connect to the meetings prior to their start.

B. Required Registration Information

Members of the public may register to attend as observers or speak if planning to offer oral comments during the scheduled public comment periods. To register for the meetings online, you must provide your full name, organization or affiliation, and contact information.

Authority: 15 U.S.C. 2605.

Dated: July 20, 2016.

Jeffery T. Morris,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2016–17706 Filed 7–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0684; FRL–9949–60–ORD]

External Peer Review Meeting for Draft Guidelines for Human Exposure Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is announcing that Versar, a contractor to the EPA, will convene an independent panel of experts to review the draft document, *Guidelines for Human Exposure Assessment* (draft guidelines). EPA previously announced release of the draft guidance for comment. The public comment period ended on March 22, 2016.

The public may register to attend this peer review meeting and time will be set aside at the meeting for brief oral comments from the public regarding the draft document. The draft document is available: Via the internet at *http://www.regulations.gov* or *www.epa.gov/osa/guidelines-human-exposure-assessment;* or from Dr. Michael Broder via the contact information below.

DATES: The peer review meeting on the draft document, *Guidelines for Human Exposure Assessment* will be held on August 15–16, 2016. The meeting will run from approximately 1 p.m. to 5 p.m. Eastern Daylight Time on August 15 and from 8:30 a.m. to 5 p.m. Eastern Daylight Time on August 16, 2016.

ADDRESSES: The meeting will be held at the following address: Crystal City Marriott at Reagan National Airport, located at 1999 Jefferson Davis Highway, Arlington, VA 22202. Versar, Inc. invites the public to register to attend this meeting, either in-person or via teleconference. The phone number for the teleconference line will be provided to register prior to the meeting.

- *Internet:* The draft document can be downloaded from *http://www.regulations.gov* Docket ID No. EPA–HQ–ORD–2015–0684.
- *Instructions:* To attend the peer review meeting, either in-person or via teleconference, you must register no later than August 12, 2016. You may do this by calling Versar at (703) 642–6815; sending a facsimile to (703) 642–6809 ATTN: Exposure Guidelines Peer Review Registration (include your name, title, affiliation, full address, email, and phone number); or sending an email to Mr. David Bottimore of Versar, Inc. at *dbottimore@versar.com* (Subject line: Exposure Guidelines Peer Review Registration and include your name, title, affiliation, full address, email, and phone number). Please indicate which day(s) you plan to attend the meeting and whether you plan to attend via teleconference or in-person. Space is limited, and registrations will be accepted on a first-come, first-served basis. There will be a limited amount of time for comments from the public at the peer review meeting. Please inform Versar if you wish to make oral comments during the meeting.
- *Information on Services for Individuals with Disabilities:* The Agency welcomes public attendance at the peer review meeting on the draft document, Guidelines for Human Exposure Assessment, and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, contact David Bottimore of Versar at (703) 642–6815.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Broder, Office of the Science Advisor, Mail Code 8105R, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number (202) 564–3393; fax number (202) 564–2070; or email: *broder.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: The current guidance document for human exposure assessment, *Guidelines for Exposure Assessment,* was published in 1992, reflecting the state-of-the-science in the 1970s and 1980s. Since its publication, the field of exposure science has undergone significant transformation in methods and approaches, which EPA has incorporated into its policies and practices to better align with the current state-of-the-science. The 1992 guidelines are being updated to reflect the advancement in exposure science and assessment and Agency policies.

The draft guidelines benefit from over two decades of experience with EPA assessments conducted by Agency programs under their respective authorities and constraints, and from input from external panels, including the National Academy of Sciences and EPA's Science Advisory Board. This draft document builds on topics covered in the 1992 exposure guidelines including planning and scoping for an assessment, data acquisition and use, modeling, and considerations of uncertainty in exposure assessment. It also includes new material on planning and conducting an observational human exposure measurement study and considerations of lifestages and sensitive populations in exposure assessments. These draft guidelines present the most current science used in EPA exposure assessments and incorporates information about the Agency's current policies.

Dated: July 19, 2016.

Thomas Burke,

EPA Science Advisor.

[FR Doc. 2016–17708 Filed 7–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0701; FRL–9949–25–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Miscellaneous Coating Manufacturing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Miscellaneous Coating Manufacturing (40 CFR part 63, subpart HHHHH) (Renewal)" (EPA ICR No. 2115.05, OMB Control No. 2060–0535), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through July 31, 2016. Public

comments were requested previously via the **Federal Register** (80 FR 32116) on June 5, 2015, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 25, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0701, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NESHAP (40 CFR part 63, subpart A), and any changes, or additions to the Provisions are specified at 40 CFR part 63, subpart HHHHH. Owners or operators of the affected facilities must submit initial notification reports, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Form Numbers: None.

Respondents/affected entities: Facilities that manufacture a miscellaneous coating.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart HHHHH).

Estimated number of respondents: 44 (total).

Frequency of response: Initially, occasionally and semiannually.

Total estimated burden: 55,800 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $6,690,000 (per year), which includes $928,000 in either annualized capital/startup or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in respondent burden in this ICR from the most recently approved ICR. This is due to a decrease in the respondent universe. For this ICR, we have updated the estimated number of respondents based on information obtained from industry consultation. This results in a decrease in the labor hours, O&M costs, and total number of responses.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–17514 Filed 7–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2004–0015; FRL 9949–48–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Clean Water State Revolving Fund Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has submitted an information collection request (ICR), "Clean Water State Revolving Fund Program" (EPA ICR No. 1391.11, OMB Control No. 2040–0118) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through July 31, 2016. Public comments were previously requested via the **Federal Register** (81 FR 19173) on April 4, 2016, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given in this renewal notice, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before August 25, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OW–2002–0059, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Mark Mylin, Municipal Support Division, Office of Wastewater Management, 4204M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–0607; email address: *mylin.mark@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR, docket number EPA–HQ–OW–2004–0015. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The Clean Water State Revolving Funds (CWSRF) were established by the 1987 amendments to the Clean Water Act (CWA) as a financial assistance program for a wide range of wastewater infrastructure and other water quality projects. The 1987 amendments added Title VI to the CWA, enabling EPA to provide grants to all 50 states and Puerto Rico to capitalize CWSRFs. The CWSRFs can provide loans and other forms of assistance for a wide array of projects, including construction of wastewater treatments facilities, green infrastructure projects, agricultural best management practices, and water and energy efficiency improvements. Eligible borrowers of CWSRF funding range from municipalities to nonprofit organizations and other private entities. Recently, Title VI of the CWA was amended in 2014 by the Water Resources Reform and Development Act (WRRDA). Additional information about the CWSRFs is available at *http://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf.*

Form Numbers: None.

Respondents/affected entities: Entities affected by this action are state environmental departments, and/or finance agencies responsible for operating the CWSRFs and eligible CWSRF borrowers.

Respondent's obligation to respond: Required to obtain or retain a benefit per Title VI of CWA as amended by WRRDA.

Estimated number of respondents: 51 state environmental departments and/or finance agencies (per year); 393 eligible CWSRF borrowers (per year)

Frequency of response: Varies by requirement (*i.e.,* quarterly, semi-annually and annually)

Total estimated burden: 57,376 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $6,074,741 (per year), including $2,928,100 in non-labor costs.

Changes in Estimates: This renewal adds two information collections activities not included in the previous version of the ICR. Specifically, the renewal includes the additional burden associated with the EPA requirement that the CWSRFs submit data into the CWNIMS and CBR databases on a recurring basis. The renewal also reflects the additional burden related to the recently released public awareness policy, directing CWSRF borrowers that receive federal funds to publicize EPA's role in funding the projects.

Though these information collection activities add additional burden, the total estimated reporting burden under this renewal is significantly lower compared to the previously approved ICR. The estimate of the annual burden has been decreased by 748,471 hours while the total annual cost burden has been decreased by $17,744,006. This significant revision is due to the removal of the burden associated with CWSRF applications and ongoing ARRA reporting.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–17513 Filed 7–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0282; FRL–9947–95]

Pesticide Experimental Use Permit; Receipt of Application; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of an application (524–EUP–RNI) from Monsanto Company requesting an experimental use permit (EUP) for *Bacillus thuringiensis* mCry51Aa2 protein and the genetic material necessary for its production (vector PV–GHIR508523) in MON 88702 cotton (OECD Unique Identifier: MON–88702–4). The Agency has determined that the permit may be of regional or national significance. Therefore, because of the potential significance, EPA is seeking comments on this application.

DATES: Comments must be received on or before August 25, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2016–0282, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 5 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on more than 10 acres of land or more than one acre of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional or national significance, and therefore is seeking public comment on the EUP application:

Submitter: Monsanto Company, 800 N. Lindbergh Blvd., St. Louis, MO 63137, (524–EUP–RNI).

Pesticide Chemical: Bacillus thuringiensis mCry51Aa2 protein and the genetic material necessary for its production (vector PV–GHIR508523) in MON 88702 cotton (OECD Unique Identifier: MON–88702–4).

Summary of Request: Monsanto Company is proposing to test MON 88702, a new plant-incorporated protectant (PIP) technology in cotton, alone and in combination with other registered PIPs in cotton to generate data and information that is intended to support future PIP registration applications (*e.g.,* PIPs with multiple modes of action against hemipteran, thysanopteran and/or lepidopteran cotton pests). Monsanto Company's proposed experimental program would begin on March 1, 2017, and continue until February 28, 2019; would take place on 2,510 acres in Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and Puerto Rico; and would use 8,495.3 grams of active ingredient. Trial protocols will concentrate on seed development and increase for future testing, nursery observations of traits in various genetic backgrounds, phenotypic and agronomic observations, efficacy and yield benefits, and product characterization, performance and regulatory studies.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 1, 2016.

Robert McNally,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2016–17533 Filed 7–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0385; FRL–9949–22]

Federal Insecticide, Fungicide, and Rodenticide Act Scientific Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review a set of scientific issues being evaluated by the Environmental Protection Agency (EPA) regarding EPA's evaluation of the carcinogenic potential of glyphosate, a non-selective, phosphonomethyl amino acid herbicide registered to control weeds in various agricultural and non-agricultural settings.

DATES: The meeting will be held on October 18–21, 2016, from approximately 9 a.m. to 5 p.m.

Comments. The Agency encourages written comments be submitted on or before October 4, 2016, to provide adequate time for the FIFRA SAP to review and consider the comments. The Agency encourages requests for oral comments be submitted on or before October 11, 2016. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after October 4, 2016, should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before August 25, 2016.

Webcast. This meeting may be webcast. Please refer to the FIFRA SAP Web site at *http://www.epa.gov/sap* for information on how to access the meeting webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: *Meeting:* The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2016–0385, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Steven Knott, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–0103; email address: *knott.steven@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through regulations.gov or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

C. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this unit.

1. *Written comments.* To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2016–0385 in the subject line on the first page of your request. The Agency encourages written comments be submitted, using the instructions in **ADDRESSES** and Unit I.B., on or before October 4, 2016, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after October 4, 2016, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments at the meeting should bring 15 copies for distribution to FIFRA SAP by the DFO.

2. *Oral comments.* The Agency encourages each individual or group wishing to make brief oral comments to FIFRA SAP to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before October 11, 2016, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment. Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 15 copies of his or her comments and presentation for distribution to FIFRA SAP at the meeting by the DFO.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Carcinogenicity (mammalian), cancer biostatistics, rodent cancer bioassays, epidemiology (cancer/occupational), genotoxicity/genetic toxicology/mutagenicity (related to human cancer risk), risk assessment, weight of evidence analysis, and mode of action/human relevance/adverse outcome pathway frameworks. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to provide expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, email address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before August 25, 2016. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before that date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the Panel and the expertise needed to address the Agency's charge to the Panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a federal department or agency, or their employment by a federal department or agency except EPA. Other factors considered during the selection process include availability of the potential Panel member to fully participate in the Panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each Panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the Panel. The Agency anticipates selecting approximately eight ad hoc scientists to have the collective breadth of experience needed to address the Agency's charge for this meeting.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634—Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture, as supplemented by EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidates' employment, stocks, bonds, and where applicable, sources of research support. EPA will evaluate the candidates' financial disclosure forms to assess whether there are financial conflicts of interest, appearance of a lack of impartiality, or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP Web site at *http://www.epa.gov/sap* or may be obtained from the OPP Docket at *http://www.regulations.gov.*

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix). FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA established a Science Review Board (SRB) consisting of at least 60 scientists who are available to FIFRA SAP on an ad hoc basis to assist in reviews conducted by FIFRA SAP. As a scientific peer review mechanism, FIFRA SAP provides comments, evaluations, and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of the FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendations to the Agency.

B. Public Meeting

Glyphosate is a non-selective, phosphonomethyl amino acid herbicide registered to control weeds in various agricultural and non-agricultural settings. Labeled uses of glyphosate include over 100 terrestrial food crops as well as other non-agricultural sites, such as greenhouses, aquatic areas, and residential areas. Use of glyphosate in the United States and globally has increased overtime, particularly with the introduction of glyphosate-resistant crops; however, usage has stabilized in recent years due to the increased number of weed species becoming resistant to glyphosate. Glyphosate is currently undergoing Registration Review, which is a program where all registered pesticides are reviewed at least every 15 years as mandated by the Federal Insecticide, Fungicide, and Rodenticide Act.

Recently, several international agencies have evaluated the carcinogenic potential of glyphosate. In March 2015, the International Agency for Research on Cancer (IARC), a subdivision of the World Health Organization (WHO), determined that glyphosate was a probable carcinogen (group 2A). Later, in November 2015, the European Food Safety Authority (EFSA) determined that glyphosate was unlikely to pose a carcinogenic hazard to humans. In May 2016, the Joint Food and Agriculture Organization (FAO)/WHO Meeting on Pesticide Residues (JMPR), another subdivision of the WHO, concluded that glyphosate was unlikely to pose a carcinogenic risk to humans from exposure through the diet.

Recently, EPA collected and analyzed a substantial amount of data informing the carcinogenic potential of glyphosate and utilized its draft "Framework for Incorporating Human Epidemiological & Incident Data in Health Risk Assessment" to assess the potential carcinogenic hazard. The draft framework provides the foundation for evaluating multiple lines of scientific evidence and includes two key components: Problem formulation and use of the mode of action/adverse outcome pathway (MOA/AOP) frameworks. A comprehensive analysis of data on glyphosate from submitted guideline studies and the open literature was performed. This includes epidemiological, animal carcinogenicity, genotoxicity, metabolism, and mechanistic studies. Guideline studies were collected for consideration from the toxicological databases for glyphosate and glyphosate salts. A fit-for-purpose systematic review was executed to obtain relevant and appropriate open literature studies with the potential to inform the human carcinogenic potential of glyphosate. Furthermore, the list of studies obtained from the toxicological databases and systematic review was cross-referenced with recent internal reviews, review articles from the open literature, and international agency evaluations (*i.e.,* IARC, EFSA, JMPR).

Available data from epidemiological, animal carcinogenicity, and genotoxicity studies were reviewed and evaluated for study quality and results to inform the human carcinogenic potential of glyphosate. Additionally, as described in the draft "Framework for Incorporating Human Epidemiological & Incident Data in Health Risk Assessment," the multiple lines of evidence were integrated in a weight-of-evidence analysis using the modified Bradford Hill Criteria considering concepts, such as strength, consistency, dose response, temporal concordance, and biological plausibility. The agency will solicit advice from the SAP on the evaluation and interpretation of the available data for each line of evidence and the weight-of-evidence analysis, as well as how the available data inform cancer classification descriptors according to the agency's 2005 Guidelines for Carcinogen Risk Assessment.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (*i.e.,* members and ad hoc members for this meeting), and the meeting agenda will be available by approximately mid-September. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available at *http://www.regulations.gov* and the FIFRA SAP Web site at *http://www.epa.gov/sap.*

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted to the FIFRA SAP Web site or may be obtained from the OPP Docket at *http://www.regulations.gov.*

Authority: 7 U.S.C. 136 *et seq.;* 21 U.S.C. 301 *et seq.*

Dated: July 19, 2016.

Stanley Barone,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 2016–17707 Filed 7–25–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of License: Agape Educational Media, Inc., Station WOWB, Facility ID 40428, BPED–20160329AER, from Brewton, AL, to Jay; Capstar, TX, LLC, Station WKZP, Facility ID 4674, BPH–20160606AAG, from Bethany Beach, DE, to West Ocean City; Citicasters Licenses, Inc., Station WRDG, Facility ID 61142, BPH–20160513AEF, from Peachtree City, GA, to Union City; Jeff Andrulonis, Station WEAF, Facility ID 24146, BP–20160426AAV, from Camden, SC, to Saint Stephen; Max Radio Of Denver LLC, Station KJHM, Facility ID 38629, BPH–20160614AAD, from Strasburg, CO, to Watkins; Minerva R. Lopez, Station KOUL, Facility ID 28074, BPH–20160216ABP, from Benavides, TX, to Agua Dulce, TX; Radio Partners, LLC, Station WKNB, Facility ID 34929, BPH–20160429ABC, from Clarendon, PA, to Sheffield; Radio Partners, LLC, Station WLSF, Facility ID 190374, BPH–

20160106AAX, from Sheffield, PA, to Clarendon; Resonance Media Group, Station NEW, Facility ID 191526, BMPH–20160629AAO, from Grand Portage, MN, to Grand Marais, MN; SLC Divestiture Trust II (Jim Burgoyne, Trustee), Station KMGR, Facility ID 65377, BMPH–20160614AAI, from Delta, UT, to Gunnison; Synergy Broadcast North Dakota, LLC, Station KLTQ, Facility ID 166059, BPH–20160513AEM, from New England, ND, to Beulah; Synergy Broadcast North Dakota, LLC, Station KQLZ, Facility ID 164305, BPH–20160513AEQ, from Beulah, ND, to New England.

DATES: The agency must receive comments on or before September 26, 2016.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2016–17625 Filed 7–25–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 11, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Richard W. Nebel, Munising, Michigan, to retain 10 percent or more of the shares of Peoples State Bancorp, Inc., Munising, Michigan, and for Richard W. Nebel, Jamie Nebel, Isabelle Nebel, Larson Nebel, Charles C. Nebel, Denise Nebel, Kyle Christian, Cameron Nebel, Chase Nebel, Kane Nebel, Keegan Nebel, Camie Nebel Conklin, Christopher Conklin, and Emma Conklin,* all of Munising, Michigan; as a group acting in concert, to acquire 25 percent or more of the shares of Peoples State Bancorp, Inc., and thereby indirectly acquire Peoples State Bank of Munising, Munising, Michigan.

Board of Governors of the Federal Reserve System, July 21, 2016.

Margaret Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–17628 Filed 7–25–16; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MG–2016–03; Docket No. 2016–0002; Sequence 16]

Office of Federal High-Performance Green Buildings; Green Building Advisory Committee; Request for Membership Nominations; Correction

AGENCY: Office of Federal High-Performance Green Buildings, General Services Administration (GSA).

ACTION: Notice of Solicitation of Nominations for Membership; Correction.

SUMMARY: GSA published a notice in the **Federal Register** on July 20, 2016 at 81 FR 47172, regarding Green Building Advisory Committee; Request for Membership Nominations. GSA is making an editorial change to the **SUPPLEMENTARY INFORMATION** section to correct a date.

DATES: *Effective:* July 26, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Sandler, Office of Federal High Performance Green Buildings, GSA, 202–219–1121. Please cite Notice–MG–2016–03; Correction.

SUPPLEMENTARY INFORMATION:

Correction

In the notice FR Doc. 2016–17145 published in the **Federal Register** at 81 FR 47172, July 20, 2016, make the following correction:

On page 47172, in the third column, third line from bottom, remove "August 1" and add "August 8" in its place.

Brian Gilligan,

Acting Federal Director, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy.

[FR Doc. 2016–17650 Filed 7–25–16; 8:45 am]

BILLING CODE 6820–14–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0278; Docket 2016–0001; Sequence 5]

Information Collection; USA.gov National Contact Center Customer Evaluation Survey

AGENCY: USA.gov Contact Center, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the National Contact Center customer evaluation surveys.

DATES: Submit comments on or before: September 26, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. David Kaufmann, Federal Information Specialist, Office of Citizen Services and Communications, at telephone 202–357–9661 or via email to *david.kaufmann@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0278, National Contact Center Evaluation Survey, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 3090–0278, National Contract Center Evaluation Survey". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–0278, National Contract Center Evaluation Survey" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms.

Flowers/IC 3090–0278, National Contract Center Evaluation Survey.

Instructions: Please submit comments only and cite Information Collection 3090–0278, National Contract Center Evaluation Survey, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection will be used to assess the public's satisfaction with the USA.gov National Contact Center service (formerly the Federal Citizen Information Center's (FCIC) National Contact Center), to assist in increasing the efficiency in responding to the public's need for Federal information, and to assess the effectiveness of marketing efforts.

B. Annual Reporting Burden

The following are estimates of the annual hourly burdens for our surveys based on historical participation in our surveys.

(1) Telephone Survey:
Respondents: 6,000.
Responses per Respondent: 1.
Annual Responses: 6,000.
Hours per Response: 0.12.
Total Burden Hours: 720.
(2) Web Chat Survey:
Respondents: 2,400.
Responses per Respondent: 1.
Annual Responses: 2,400.
Hours per Response: 0.12.
Total Burden Hours: 288.
(3) Email Survey:
Respondents: 3,600.
Responses per Respondent: 1.
Annual Responses: 3,600.
Hours per Response: 0.12.
Total Burden Hours: 432.
Grand Total Burden Hours: 1,440.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 3090–0278, National Contact Center Customer Evaluation Survey, in all correspondence.

Dated: July 21, 2016.

David A. Shive,

Chief Information Officer.

[FR Doc. 2016–17698 Filed 7–25–16; 8:45 am]

BILLING CODE 6820–CX–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16VB]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

HIV Knowledge, Beliefs, Attitudes, and Practices of Providers in the Southeast (K–BAP Study)—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Persons at high risk of HIV infection have often had one or more contacts with a health care provider within a year of their diagnoses. These health care encounters represent missed opportunities to: (1) Review and discuss sexual health and risk reduction, (2) screen for HIV infection and other STDs, (3) recognize and diagnose acute HIV infection and offer immediate antiretroviral therapy (ART) if indicated, (4) discuss the prevention benefit of treatment (with subsequent referral or prescription) and re-engagement in care, as appropriate, and (5) provide PrEP and nPEP if not infected and at high risk, consistent with current HIV prevention guidelines and recommendations.

Health care providers in high-prevalence geographic areas could substantially reduce new HIV infections among the patient populations they serve, as well as their communities. Health care providers are a trusted source of reliable information. They also have the capacity to perform STD/HIV testing and to prescribe medication with appropriate clinical follow-up. Review of the literature published between January 2000 and June 2014 indicates we know little about providers' knowledge, beliefs, attitudes, and practices (K–BAP) in at-risk jurisdictions about HIV risk, HIV diagnosis and antiretroviral drug interventions in these domains, especially primary care providers serving high-risk patients in high-prevalence communities. K–BAP Study is an effort to assess providers' K–BAP using a cross sectional survey in the five priority HIV prevention domains noted above.

This K–BAP Study aligns with multiple goals and objectives of the National HIV/AIDS Strategy (NHAS) and CDC's "winnable battles."

The project's specific objectives are to (1) Characterize knowledge, beliefs, attitudes, and practices of providers in five key HIV prevention domains in high-HIV prevalence communities with disproportionate numbers of blacks/African Americans, and (2) Educate providers about prevention interventions related to these domains based on survey-identified knowledge, beliefs, attitudes, and practices of providers' deficits.

The respondent population of medical providers will be pulled from the Healthcare Data Solutions (HDS) ProviderPRO and MidLevelPRO databases. Respondents will be recruited to participate in the survey through a combination of emails and phone calls. This strategy will consist of four emails spaced one week apart followed by phone calls to non-responders. The emails will explain the purpose of the survey, the availability of continuing education (CE) credits, and the $20 cash token of appreciation.

A large two-part internet-based survey will be conducted among a representative random sample of providers in the selected six (6) metropolitan statistical areas (MSAs) with the highest HIV burden among the African American population. Part one of the survey will be administered to participants at the beginning of the project. The part-one survey findings will be used to identify providers' knowledge, beliefs, attitudes, and practices that might require additional educational reinforcement. Based on survey responses, providers will be linked to continuing education (CE) credit-eligible educational modules to improve their educational deficits. The educational modules are all web-based using either video or case-based methods of learning. The length of the course ranges from 1–3 hours accounting for 0.25–1.0 credit hours. Part two of the survey will be administered six months later comprised of only the core questions in part one of the survey to assess impact of CE modules on providers' practices regarding HIV prevention and treatment.

There are no costs to respondents other than their time. The total annual burden hours are 1,219.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Providers	Baseline Screener and Survey	1,827	1	30/60
Providers	Follow-Up Screener and Survey	914	1	20/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–17642 Filed 7–25–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16AVM; Docket No. CDC–2016–0065]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice accompanies a Notice of Proposed Rulemaking and invites comment on the information collection request *Airline and Vessel and Traveler Information Collection.* This information collection request pertains to CDC's activities with regard to requirements at proposed § 71.4 and § 71.5 that airlines and vessels arriving to the United States from foreign countries send passenger, crew, and conveyance information (aka manifests) to CDC in the event that a communicable disease of public health concern is suspected or confirmed in a person aboard who poses a potential public health risk to other travelers and their communities after arriving in the United States. This information also pertains to current activities with regard to the collection of manifests from domestic flights within the United States, as well as the collection of traveler information using the Passenger Locator Form (PLF) on both international and domestic flights.

DATES: Written comments must be received on or before September 26, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0065 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov.*

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Airline and Vessel and Traveler Information Collection (42 CFR part 70 and 71)—New—Division of Global Migration and Quarantine, National Center for Emerging Zoonotic and Infectious Diseases, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Under the Public Health Service Act (42 United States Code § 264) and under 42 Code of Federal Regulations (CFR) § 71.32(b) and 42 CFR 70.2, CDC can order airlines and vessels arriving from another country or traveling between states to submit a data set including airline or vessel details, and passenger and crew member information if CDC reasonably believes that a traveler exposed to or infected with a communicable disease of public health concern could have put other passengers at risk for a communicable disease. In the accompanying Notice of Proposed Rulemaking, CDC is proposing to create two specific provisions that require the submission of airline and vessels and traveler data CDC. These provisions are proposed § 71.4 Requirements relating to collection, storage, and transmission of airline passenger, crew, and flight information for public health purposes and proposed § 71.5 Requirements relating to collection, storage and transmission of ship passenger, crew and voyage information for public health purposes. CDC anticipates that, while this is not a new practice, the listing of specific variables in specific regulatory provisions, will improve the submission of more timely, accurate, and complete traveler contact information by air and maritime companies.

While not associated with this NPRM, CDC is also seeking approval for domestic airline and vessel and traveler information orders under current authorities in 42 CFR 70.2. This activity is also currently already current practice.

Additionally, CDC requests to transition the Passenger Locator Form (PLF), previously included and approved by OMB in 0920–0134 Foreign Quarantine Regulations, into this Information Collection Request. Further, CDC is requesting approval for the use of the PLF for the collection of traveler information from individuals on domestic flights. The PLF, a form developed by the International Civil Aviation Organization (ICAO) in concert with its international member states and other aviation organizations, is used when there is a confirmation or strong suspicion that an individual(s) aboard a flight is infected with or exposed to a communicable disease that is a threat to co-travelers, and CDC is made aware of the individual(s) prior to arrival in the United States. This prior awareness can provide CDC with an opportunity to collect traveler contact information directly from the traveler prior to departure from the arrival airport.

Stopping a communicable disease outbreak—whether it is naturally occurring or intentionally caused—requires the use of the most rapid and effective public health tools available. Basic public health practices, such as collaborating with airlines in the identification and notification of potentially exposed contacts, are critical tools in the fight against the introduction, transmission, and spread of communicable diseases in the United States.

The collection of timely, accurate, and complete contact information enables Quarantine Public Health Officers in CDC's Division of Global Migration and Quarantine (DGMQ) to notify state and local health departments in order for them to make contact with individuals who may have been exposed to a contagious person during travel and identify appropriate next steps.

In the event that there is a confirmed case of communicable disease of public health concern aboard an aircraft or ship, CDC collects manifest information for those passengers and crew at risk for exposure. The specific manifest of PLF information collection differs depending on the communicable disease that is confirmed during air or maritime travel. CDC uses this manifest and PLF information to coordinate with state and local health departments so they can follow-up with residents who live or are currently located in their jurisdiction. In general, state and local health departments are responsible for the contact investigations. In rare cases, CDC may use the manifest and PLF data to perform the contact investigation directly. In either case, CDC works with state and local health departments to ensure individuals are contacted and provided appropriate public health follow-up.

While the title of this information collection request includes vessels, CDC does not routinely collect vessel manifest information, and does so less than 10 times per year. Therefore, there is no vessel and maritime traveler information collection in the burden table.

Estimated Annualized Burden Hours

CDC estimates that for each set of vessel and traveler information ordered, airlines require approximately six hours to review the order, search their records, and send those records to CDC. CDC anticipates that travelers will need approximately five minutes to complete the PLF. There is no cost to respondents other than their time perform these actions. For manifest information, CDC does not have a specified format for these submissions, only that it is one acceptable to both CDC and the respondent.

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Airline Medical Officer or Equivalent/ Computer and Information Systems Manager.	Domestic TB Manifest Template	1	1	360/60	6
Airline Medical Officer or Equivalent/ Computer and Information Systems Manager.	Domestic Non-TB Manifest Template.	28	1	360/60	168
Airline Medical Officer or Equivalent/ Computer and Information Systems Manager.	International TB Manifest Template	67	1	360/60	402
Airline Medical Officer or Equivalent/ Computer and Information Systems Manager.	International Non-TB Manifest Template..	29	1	360/60	174
Traveler	Public Health Passenger Locator Form: Outbreak of public health significance (international flights).	2,700,000	1	5/60	225,000
Traveler	Public Health Passenger Locator Form: Limited onboard exposure (international flights.	800	1	5/60	67
Traveler	Public Health Passenger Locator Form (domestic flights).	800	1	5/60	67
Total	....	....	....	....	225,884

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–17601 Filed 7–25–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–15AUE]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Capacity Building Assistance Assessment for HIV Prevention—New—Division of HIV/AIDS Prevention, National Centers for HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

For over 30 years, Human Immunodeficiency Virus (HIV) has been an epidemic, affecting millions globally. Some groups are disproportionately affected by this epidemic. In order to address these health disparities, the CDC is funding 120 CBOs and their collaborative partners (Partnerships) to address the national HIV epidemic by reducing new infections, increasing access to care, and promoting health equity; particularly for people living with and at greatest risk of HIV infection. This includes including African Americans/Blacks; Latinos/Hispanics; all races and ethnicities of gay, bisexual, and other MSM; IDUs; and transgender persons.

Building the capacity of the funded community-based organizations to conduct HIV programs and services is a priority to ensure effective and efficient delivery of HIV prevention treatment and care services. Since the late 1980s, CDC has been working with CBOs to broaden the reach of HIV prevention efforts. Over time, the CDC's program for HIV prevention has grown in size, scope, and complexity, responding to changes in approaches to addressing the epidemic, including the introduction of new guidance, effective behavioral, biomedical, and structural interventions, and public health strategies.

The Capacity Building Branch within the Division of HIV/AIDS Prevention (D provides national leadership and support for capacity building assistance (CBA) to help improve the performance of the HIV prevention workforce. One way that it accomplishes this task is by funding CBA providers to work with CBOs, health departments, and communities to increase their knowledge, skills, technology, and infrastructure to implement and sustain science-based, culturally appropriate High Impact HIV Prevention (HIP) interventions and public health strategies.

Applicants selected for funding must work with the CDC-funded CBA providers to develop and implement a Capacity Building Assistance Strategic Plan (CBASP). The information collected via this process will be used to construct a CBASP for each funded organization in collaboration with CDC's Capacity Building Branch (CBB). CBA Providers will provide technical assistance and training to ensure that the CBOs and Partnerships have the skills and support they need to successfully implement their CDC-funded HIV High Impact Prevention program.

CBA providers will utilize the CBO CBA Assesent Tool which offers a mixed-method data collection approach with close-ended, and open-ended questions. CBOs will complete and submit the completed web-based Tool, which will be discussed, and needs confirmed, during a follow-up phone contact assessment. A follow-up site visit may be recommended for CBOs with dire needs (up to 20%), which will be scheduled upon approval by the Project Officer and Program Consultant. Data from all completed Tools will be analyzed and used to develop a CBA Strategic Plan (CBASP) which will be housed in the Capacity Assistance Request Information System (managed by the Capacity Building Branch), in the Division of HIV/AIDS Prevention and consulted by CBA Providers assigned to respond to the prioritized CBOs' CBA needs.

By the end of the project, the participating CBOs and Partnerships will have tailored CBA strategic plans that they can use to help sustain their programs across and beyond the life of their funding. Based on these plans, the CBA providers in collaboration with CDC will be able to better identify and address those needs most reported by CBOs. Finally, the Capacity Building Branch will be able to refine its approach to conceptualizing and providing CBA on a national level in the most cost-effective manner possible. There is no cost to respondents other than their time. The total annual burden hours are 240.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)
CBO Grantees	CBO CBA Assessment Tool	120	1	2

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–17643 Filed 7–25–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–16–0214; Docket No. CDC–2016–0069]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the National Health Interview Survey (NHIS). The annual National Health Interview Survey is a major source of general statistics on the health of the U.S. population.

DATES: Written comments must be received on or before September 26, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0069 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov.*

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

National Health Interview Survey (NHIS) (OMB No. 0920–0214, expires 12/31/2017)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C.), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States.

The annual National Health Interview Survey is a major source of general statistics on the health of the U.S. population and has been in the field continuously since 1957. Clearance is sought for three years, to collect data for 2017–2019.

This voluntary and confidential household-based survey collects demographic and health-related information from a nationally-representative sample of noninstitutionalized, civilian persons and households throughout the country. Personal identification information is requested from survey respondents to facilitate linkage of survey data with health-related administrative and other records. In 2017 the NHIS will collect information from approximately 45,000 households, which contain about 100,000 individuals. Information is collected using computer assisted personal interviews (CAPI).

A core set of data is collected each year that remains largely unchanged, whereas sponsored supplements vary from year to year. The core set includes socio-demographic characteristics, health status, health care services, and health behaviors. For 2017, supplemental questions will be cycled in pertaining to alternative and integrative medicine, cognitive disability, and receipt of culturally and linguistically appropriate health care services, epilepsy, and heart disease and stroke. Supplemental topics that continue or are enhanced from 2016 pertain to the Affordable Care Act, chronic pain, Crohn's disease and colitis, diabetes, disability and functioning, family food security, ABCS of heart disease and stroke prevention, immunizations, smokeless tobacco and e-cigarettes, vision, and children's mental health. Questions from 2016 on balance and Hepatitis B and C screening have been removed. In addition to these core and supplemental modules, a subsample of NHIS respondents and/or members of commercial survey panels may be identified to participate in short, web-based methodological and cognitive testing activities that will inform the upcoming 2018 NHIS questionnaire redesign. The aims of these standalone assessments include pilot testing new and/or updated questionnaire items, evaluating the impact of different categorical response option formats on answer choices, and measuring respondent comprehension of health care-related terms and concepts.

In accordance with the 1995 initiative to increase the integration of surveys within the DHHS, respondents to the NHIS serve as the sampling frame for the Medical Expenditure Panel Survey conducted by the Agency for Healthcare Research and Quality. The NHIS has long been used by government, academic, and private researchers to evaluate both general health and specific issues, such as smoking, diabetes, health care coverage, and access to health care. It is a leading source of data for the Congressionally-mandated "Health US" and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, "Healthy People 2020."

There is no cost to the respondents other than their time. The estimated annualized burden hours for this data collection are 502 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of Respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Adult Family Member	Family Core	45,000	1	23/60	17,250
Sample Adult	Adult Core	36,000	1	15/60	9,000
Adult Family Member	Child Core	14,000	1	10/60	2,333
Adult Family Member	Supplements	45,000	1	15/60	15,000
Adult Family Member	Methodological Projects	15,000	1	30/60	5,000
Adult Family Member	Re-interview Survey	5,000	1	5/60	417
Total					49,000

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–17611 Filed 7–25–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–16–15AUK]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Monitoring and Reporting System for the Prescription Drug Overdose Prevention for States Cooperative agreement—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Drug overdose is the leading cause of injury death in the United States. Opioid-prescribing behaviors are associated with an increased risk for morbidity and mortality. While opioid pain relievers can play an important role in the management of some types of pain, the overprescribing of these powerful drugs has fueled a national epidemic of prescription drug abuse and overdose. To reverse this complex epidemic and prevent future overdose, abuse, and misuse, the Centers for Disease Control and Prevention (CDC) provides support to states to improve surveillance. Support and guidance for these programs have been provided through cooperative agreement funding and technical assistance administered by CDC's National Center for Injury Prevention and Control (NCIPC).

The Centers for Disease Control and Prevention (CDC) seeks new OMB approval to collect information from awardees funded under the Prescription Drug Overdose Prevention for States (CDC–RFA–CE15–1501) cooperative agreement, for program monitoring and improvement among funded state health departments. Awardees will report progress and activity information to CDC on an annual schedule using an Excel-based fillable electronic templates, pre-populated to the extent possible by CDC staff. In Year 1, each awardee will have additional burden related to initial collection of the reporting tools. After completing the initial population of the tools, pertinent information only needs to be updated for each annual report. The same instruments will be used for all information collection and reporting.

CDC will use the information collected to monitor each awardee's progress and to identify facilitators and challenges to program implementation and achievement of outcomes. Monitoring allows CDC to determine whether an awardee is meeting performance and budget goals and to make adjustments in the type and level of technical assistance provided to them, as needed, to support attainment of their performance measures.

The total estimated annualized burden for this collection is 812 hours. OMB approval is requested for three years. Participation in the information collection is required as a condition of funding. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State and Territorial Health Department Program Awardees.	Initial population—Annual reporting—Progress Report Tool.	29	1	20
	Annual reporting—Progress Report Tool	29	1	4
	Annual reporting—Plan Tool	29	1	4

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–17604 Filed 7–25–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–0995; Docket No. CDC–2016–0071]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on "National Network of Sexually Transmitted Diseases Clinical Prevention Training Centers (NNPTC): Evaluation". The purpose of this study is to improve sexually transmitted disease care in the United States.

DATES: Written comments must be received on or before September 26, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0071 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov.*

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

National Network of Sexually Transmitted Diseases Clinical Prevention Training Centers (NNPTC): Evaluation—OMB No. 0920–0995, Expiration: 10/31/2016—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), Division of HIV/AIDS Prevention requests a revision and 3-year approval of the currently approved information collection request that comprises the NNPTC Abbreviated Health Professional Application for Training (NNPTC Abbreviated HPAT). The NNPTC Abbreviated HPAT will continue to serve as the official training application form used for training activities conducted by the Sexually Transmitted Disease (STD) Prevention Training Centers' (PTCs) grantees funded by the (CDC).

The PTCs are funded by CDC/Division of STD Prevention (DSTDP) to provide training and capacity-building that includes information, training, technical assistance and technology transfer.

The PTCs offer classroom and experiential training, web-based training, clinical consultation, and capacity building assistance to maintain and enhance the capacity of health care professionals to control and prevent STDs and HIV. The NNPTC Abbreviated HPAT is used to monitor and evaluate performance and reach of grantees that offer STD and HIV prevention training, training assistance, and capacity building assistance to physicians, nurses, disease intervention specialists, health educators, etc.

The 4,500 respondents (who will engage in a total of 11,769 respondent instances) represent an average of the number of health professionals trained by PTC grantees during 2015. The evaluation instruments collect data on the impact of the training by the NNPTC. The revision of this data collection is necessary to assess and evaluate the performance of the grantees in delivering training and to standardize training registration processes across the PTCs. The NNPTC Abbreviated HPAT allows CDC grantees to use a single instrument when collecting demographic data from its training and capacity building participants, regarding their: (1) Occupations, professions, and functional roles; (2) principal employment settings; (3) location of their work settings; and (4) programmatic and population foci of their work. The NNPTC Abbreviated HPAT takes approximately 3 minutes to complete. This data collection provides CDC with information to determine whether the training grantees are reaching their target audiences in terms of provider type, the types of organizations in which participants work, the focus of their work and the population groups and geographic areas served.

The evaluation instruments are used to assess training and capacity-building outcomes (knowledge, confidence, intention to use information, actual changes made as a result of training) immediately after and again 90 days after training events. The evaluation instruments vary based on the type of training offered and take between approximately 16 minutes to complete (for intensive multi-day trainings) to 2 minutes to complete (for short didactic or webinar sessions).

The CDC's Funding Opportunity Announcement PS 14–1407, NNPTC, requires the collection of national demographic information on grantees' trainees and national evaluation outcomes.

There are no costs to respondents other than their time. The estimated annualized burden hours for this data collection are 502 hours.

ESTIMATES OF ANNUALIZED BURDEN

Type of respondent	Form name	Number of espondents	Number esponses per respondent	Average urden per esponse (in hours)	Total burden hours
Healthcare Professionals	NNPTC Abbreviated Health Professional Application for Training (HPAT).	4,500	1	3/60	225
Healthcare Professionals	Intensive Complete Post-Course Evaluation.	116	1	16/60	31
	Intensive Complete Long-Term Evaluation.	36	1	10/60	6
Healthcare Professionals	Intensive-Didactic Post-Course Evaluation.	166	1	10/60	28
	Intensive-Didactic Long-Term Evaluation.	58	1	7/60	7
Healthcare Professionals	Practicum Post-Course Evaluation	70	1	4/60	5
	Practicum Long-Term Evaluation	20	1	3/60	1
Healthcare Professionals	Wet Mount Post-Course Evaluation	40	1	3/60	2
	Wet Mount Long-Term Evaluation	15	1	2/60	1
Healthcare Professionals	STD Tx Guidelines Complete Post-Course Evaluation.	548	1	6/60	55
	STD Tx Guidelines Complete Long-Term Evaluation.	180	1	5/60	15
Healthcare Professionals	Short Guidelines Post-Course Evaluation.	500	1	3/60	25
	Short Guidelines Long-Term Evaluation.	160	1	3/60	8
Healthcare Professionals	Basic Post-Course Evaluation	150	1	2/60	5
	Basic Long-Term Evaluation	50	1	2/60	2
Healthcare Professionals	Immediate Post-Course email invitation.	4,500	1	1/60	75
Healthcare Professionals	3 Month Long-Term email invitation	660	1	1/60	11
Total					502

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–17603 Filed 7–25–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–0612; Docket No. CDC–2016–0070]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) Reporting System. The WISEWOMAN program aims to reduce cardiovascular disease in women ages 40–64 by providing screening services, referrals to medical care, and lifestyle intervention programs.

DATES: Written comments must be received on or before September 26, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0070 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov. Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Well-Integrated Screening and Evaluation for Women across the Nation (WISEWOMAN) Reporting System (OMB No. 0920–0612, exp. 12/31/2016)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The WISEWOMAN program (Well-Integrated Screening and Evaluation for Women Across the Nation), sponsored by the CDC, was established to examine ways to improve the delivery of services for women who have limited access to health care and elevated risk factors for cardiovascular disease (CVD). The program focuses on reducing CVD risk factors and provides screening services for selected risk factors such as elevated blood cholesterol, hypertension, and abnormal blood glucose levels. The program also provides women with referrals to lifestyle programs and medical care. The WISEWOMAN program provides services to women who are jointly enrolled in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), also administered by CDC.

The WISEWOMAN program is administered by state health departments and tribal programs. In 2013, new cooperative agreements were awarded under Funding Opportunity Announcement DP13–1302. These awards are currently in the final year of funding, but may be extended by CDC for one additional year, subject to the availability of funds.

CDC collects two types of information from WISEWOMAN awardees. The hardcopy Annual Progress Report provides a narrative summary of each awardee's objectives and the activities undertaken to meet program goals. The estimated burden per response is 16 hours.

In addition, each WISEWOMAN awardee submits an electronic data file to CDC twice per year. The Minimum Data Elements (MDE) file contains de-identified, client-level information about the cardiovascular disease risk factors of women served by the program, and the number and type of lifestyle program sessions they attend. The estimated burden per response for the MDE file is 24 hours.

CDC seeks a one-year extension to enable reporting for the final year of activities funded under the current cooperative agreement and the option year, subject to the availability of funds. There are no changes to the information collected, the burden per response, reporting frequency, the number of awardees, or the total annualized burden hours.

CDC will continue to use the information collected from WISEWOMAN awardees to support program monitoring and improvement activities, evaluation, and assessment of program outcomes. The overall program evaluation is designed to demonstrate how WISEWOMAN can obtain more complete health data on vulnerable populations, promote public education about disease incidence, cardiovascular disease risk-factors, health promotion, improve the availability of screening and diagnostic services for under-served women, ensure the quality of services provided to underserved women, and develop strategies for improved interventions.

OMB approval is requested for one year. Participation in this information collection is required as a condition of cooperative agreement funding. There are no costs to respondents other than their time. The total annualized burden hours are 1,344.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
WISEWOMAN Awardees	Screening and Assessment and Lifestyle Program MDEs.	21	2	24	1,008
	Annual Progress Report	21	1	16	336
Total					1,344

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–17602 Filed 7–25–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Phase II Evaluation Activities for Implementing a Next Generation Evaluation Agenda for the Chafee Foster Care Independence Program.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), Office of Planning Research and Evaluation (OPRE) is proposing an information collection activity as part of the Phase II Evaluation Activities for Implementing a Next Generation Evaluation Agenda for the Chafee Foster Care Independence Program. The proposed information collection consists of site visits by staff from the Urban Institute and Chapin Hall at the University of Chicago to conduct formative evaluations of programs serving transition-age foster youth. The evaluations will include preliminary visits to discuss the evaluation process with program administrators. Then, the research team will conduct site visits to each program to speak with program leaders, partners and key stakeholders, front-line staff, and participants. These formative evaluations will determine programs' readiness for more rigorous evaluation in the future. The activities and products from this project will help ACF to fulfill their ongoing legislative mandate for program evaluation specified in the Foster Care Independence Act of 1999.

Respondents: Program leaders, partners and stakeholders, and frontline staff as well as young adults being served by the programs.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Outreach email for discussion with program admin and staff	16	8	1	1	8
Outreach email for Focus Group Recruiters	16	8	1	8	64
Informed Consent and Discussion Guide for program leaders	48	24	4	1	96
Informed Consent and Discussion Guide for program partners and stakeholders	80	40	2	1	80
Informed Consent and Discussion Guide for program front-line staff	128	64	1	1	64
Informed Consent and Focus Group Guide for program participants	200	100	1	2	200
Compilation and Submission of Administrative Data	24	12	2	12	288

Estimated Total Annual Burden Hours: 800.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

ACF Certifying Officer.

[FR Doc. 2016–17618 Filed 7–25–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0451]

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 044

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a publication containing modifications the Agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA Recognized Consensus Standards). This publication, entitled Modifications to the List of Recognized Standards, Recognition List Number: 044 (Recognition List Number: 044), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit electronic or written comments concerning this document at any time. These modifications to the list of recognized standards are effective July 26, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2004–N–0451 for "Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 044." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 043.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of Recognition List Number: 044 is available on the Internet at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.* See section VI of this document for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 044 modifications and other standards related information. Submit written requests for a single hard copy of the document entitled "Modifications to the List of Recognized Standards, Recognition List Number: 044" to Scott A. Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5514, Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149.

FOR FURTHER INFORMATION CONTACT: Scott A. Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5514, Silver Spring, MD 20993, 301–796–6287, *standards@cdrh.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled "Recognition and Use of Consensus Standards." The notice described how FDA would implement its standard recognition program and provided the initial list of recognized standards.

Modifications to the initial list of recognized standards, as published in the **Federal Register**, can be accessed at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.*

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The Agency maintains hypertext markup language (HTML) and portable document format (PDF) versions of the list of FDA Recognized Consensus Standards. Both versions are publicly accessible at the Agency's Internet site. See section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to the List of Recognized Standards, Recognition List Number: 044

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the Agency will recognize for use in premarket submissions and other requirements for devices. FDA will incorporate these modifications in the list of FDA Recognized Consensus Standards in the Agency's searchable database. FDA will use the term "Recognition List Number: 044" to identify these current modifications.

In table 1, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others, if applicable; (2) the correction of errors made by FDA in listing previously recognized standards; and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III, FDA lists modifications the Agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
		A. Biocompatibility	
2–93		ASTM F763–04 (Reapproved 2010) Standard Practice for Short-Term Screening of Implant Materials.	Extent of recognition, Relevant guidance.
2–94		ASTM F981–04 (Reapproved 2010) Standard Practice for Assessment of Compatibility of Biomaterials for Surgical Implants with Respect to Effect of Materials on Muscle and Bone.	Extent of recognition, Relevant guidance.
2–114		ASTM F1877–05 (Reapproved 2010) Standard Practice for Characterization of Particles.	Extent of recognition, Relevant guidance.
2–117	2–226	ANSI/AAMI/ISO 10993–3:2014 Biological evaluation of medical devices—Part 3: Tests for genotoxicity, carcinogenicity, and reproductive toxicity.	Withdrawn and replaced with newer version.
2–118		ANSI/AAMI/ISO 10993–11:2006/(R) 2014 Biological evaluation of medical devices—Part 11: Tests for systemic toxicity.	Reaffirmation, Extent of recognition, Relevant guidance.
2–119		ASTM F813–07 (Reapproved 2012) Standard Practice for Direct Contact Cell Culture Evaluation of Materials for Medical Devices.	Extent of recognition, Relevant guidance.
2–120		ANSI/AAMI/ISO 10993–6:2007/(R) 2014 Biological evaluation of medical devices—Part 6: Tests for local effects after implantation.	Reaffirmation, Extent of recognition, Relevant guidance.
2–122		ASTM F719–81 (Reapproved 2012) Standard Practice for Testing Biomaterials in Rabbits for Primary Skin Irritation.	Extent of recognition, Relevant guidance.
2–124		ASTM F750–87 (Reapproved 2012) Standard Practice for Evaluating Material Extracts By Systemic Injection in the Mouse.	Extent of recognition, Relevant guidance.
2–126		ASTM F748–06 (Reapproved 2010) Standard Practice for Selecting Generic Biological Test Methods for Materials and Devices.	Extent of recognition, Relevant guidance.
2–133		ASTM F1408–97 (Reapproved 2013) Standard Practice for Subcutaneous Screening Test for Implant Materials.	Extent of recognition, Relevant guidance.
2–134		ASTM F2065–00 (Reapproved 2010) Standard Practice for Testing for Alternative Pathway Complement Activation in Serum by Solid Materials.	Extent of recognition, Relevant guidance.
2–136		ASTM E1262–88 (Reapproved 2013) Standard Guide for Performance of Chinese Hamster Ovary Cell/Hypoxanthine Guanine Phosphoribosyl Transferase Gene Mutation Assay.	Extent of recognition, Relevant guidance.
2–141		ASTM F1984–99 (Reapproved 2013) Standard Practice for Testing for Whole Complement Activation in Serum by Solid Materials.	Extent of recognition, Relevant guidance.
2–142	2–227	ASTM F1983–14 Standard Practice for Assessment of Selected Tissue Effects of Absorbable Biomaterials for Implant Applications.	Withdrawn and replaced with newer version.
2–145		ASTM F1439–03 (Reapproved 2013) Standard Guide for Performance of Lifetime Bioassay for the Tumorigenic Potential of Implant Materials.	Extent of recognition, Relevant guidance.
2–153		ANSI/AAMI/ISO 10993–5:2009/(R) 2014 Biological evaluation of medical devices—Part 5: Tests for in vitro cytotoxicity.	Extent of recognition, Relevant guidance.
2–155		ASTM F2147–01 (Reapproved 2010) Standard Practice for Guinea Pig: Split Adjuvant and Closed Patch Testing for Contact Allergens.	Extent of recognition, Relevant guidance.
2–156		ANSI/AAMI 10993–1:2009/(R) 2013 Biological evaluation of medical devices—Part 1: Evaluation and testing within a risk management process [Including: Technical Corrigendum 1 (2010)].	Extent of recognition, Relevant guidance.
2–162		ASTM F1903–10 Standard Practice for Testing For Biological Responses to Particles In Vitro.	Extent of recognition, Relevant guidance.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard[1]	Change
2–163		ANSI/AAMI/ISO 10993–9: 2009/(R) 2014 Biological evaluation of medical devices—Part 9: Framework for identification and quantification of potential degradation products.	Reaffirmation, Extent of recognition, Relevant guidance.
2–165		ANSI/AMMI/ISO 10993–14:2001/(R) 2011, Biological evaluation of medical devices—Part 14: Identification and quantification of degradation products form ceramics.	Relevant guidance.
2–167		ISO TS 10993–19 First edition 2006–06–01 Biological evaluation of medical devices—Part 19: Physio-chemical, morphological and topographical characterization of materials.	Extent of recognition, Relevant guidance.
2–168		ISO 10993–9 Second edition 2009–12–15 Biological evaluation of medical devices—Part 9: Framework for identification and quantification of potential degradation products.	Extent of recognition, Relevant guidance.
2–169		ISO 10993–13 Second edition 2010–06–15, Biological evaluation of medical devices—Part 13: Identification and quantification of degradation products from polymeric medical devices.	Extent of recognition, Relevant guidance.
2–170		ISO 10993–14 First edition 2001–11–15, Biological evaluation of medical devices—Part 14: Identification and quantification of degradation products from ceramics.	Relevant guidance.
2–171		ISO 10993–16 Second edition 2010–02–15, Biological evaluation of medical devices—Part 16: Toxicokinetic study design for degradation products and leachables.	Relevant guidance.
2–172		ANSI/AAMI/ISO TIR 10993–19:2006 Biological evaluation of medical devices—Part 19: Physicochemical, morphological, and topographical characterization of materials.	Extent of recognition, Relevant guidance.
2–173		ANSI/AAMI/ISO 10993–10:2010/(R) 2014 Biological evaluation of medical devices—Part 10: Tests for irritation and skin sensitization.	Reaffirmation, Extent of recognition, Relevant guidance.
2–174		ISO 10993–10 Third Edition 2010–08–01 Biological evaluation of medical devices—Part 10: Tests for irritation and skin sensitization.	Extent of recognition, Relevant guidance.
2–175	2–228	ISO 10993–3:2014 Third edition 2014–10–1 Biological evaluation of medical devices—Part 3: Tests for genotoxicity, carcinogenicity, and reproductive toxicity.	Withdrawn and replaced with newer version.
2–176		ISO 10993–11 Second edition 2006–08–15 Biological evaluation of medical devices—Part 11: Tests for systemic toxicity.	Extent of recognition, Relevant guidance.
2–177		ISO 10993–06 Second edition 2007–04–15 Biological evaluation of medical devices—Part 6: Tests for local effects after implantation.	Extent of recognition, Relevant guidance.
2–180		ANSI/AAMI/ISO 10993–16:2010/(R) 2014, Biological evaluation of medical devices—Part 16: Toxicokinetic study design for degradation products and leachables from medical devices.	Relevant guidance.
2–189		ASTM F895–11 Standard Test Method for Agar Diffusion Cell Culture Screening for Cytotoxicity.	Extent of recognition, Relevant guidance.
2–190		ANSI/AAMI/ISO 10993–13:2010/(R) 2014 Biological evaluation of medical devices—Part 13: Identification and quantification of degradation products from polymeric medical devices.	Reaffirmation, Extent of recognition, Relevant guidance.
2–191		ISO 10993–12 Fourth edition 2012–07–01 Biological evaluation of medical devices—Part 12: Sample preparation and reference materials.	Extent of recognition, Relevant guidance.
2–197		ASTM F749–13 Standard Practice for Evaluating Material Extracts by Intracutaneous Injection in the Rabbit.	Extent of recognition, Relevant guidance.
2–198		ANSI/AAMI/ISO 10993–12:2012 Biological evaluation of medical devices—Part 12: Sample preparation and reference materials.	Extent of recognition, Relevant guidance.
2–204		ASTM F720–13 Standard Practice for Testing Guinea Pigs for Contact Allergens: Guinea Pig Maximization Test.	Extent of recognition, Relevant guidance.
2–206		ASTM F2148–13 Standard Practice for Evaluation of Delayed Contact Hypersensitivity Using the Murine Local Lymph Node Assay (LLNA).	Extent of recognition, Relevant guidance.
2–207		ASTM F756–13 Standard Practice for Assessment of Hemolytic Properties of Materials.	Extent of recognition, Relevant guidance.
2–213		ASTM F1904–14 Standard Practice for Testing the Biological Responses to Particles In Vivo.	Extent of recognition, Relevant guidance.
2–214		ASTM F619–14 Standard Practice for Extraction of Medical Plastics	Extent of recognition, Relevant guidance.
2–215	2–229	USP 39–NF34:2016 <87> Biological Reactivity test, In Vitro—Direct Contact Test.	Withdrawn and replaced with a newer version.
2–216	2–230	USP 39–NF34:2016 <87> Biological Reactivity Test, In Vitro—Elution Test.	Withdrawn and replaced with a newer version.
2–217	2–231	USP 39–NF34: 2016 <88> Biological Reactivity Tests, In Vivo	Change in title, Withdrawn and replaced with a newer version.
2–218		USP 39–NF34: 2016 <88> Biological Reactivity Tests In Vivo, Classification of Plastics—Intracutaneous Test.	Withdrawn; See 2–231.
2–219		USP 39–NF34: 2016 <88> Biological Reactivity Tests In Vivo, Classification of Plastics—Systemic Injection Test.	Withdrawn; See 2–231.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
2–220		ISO 10993–1 Fourth edition 2009–10–15 Biological evaluation of medical devices—Part 1: Evaluation and testing within a risk management process [Including: Technical Corrigendum 1 (2010)].	Extent of recognition, Relevant guidance.
2–221		ANSI/AAMI/ISO 10993–2:2006/(R) 2014 Biological evaluation of medical devices—Part 2: Animal welfare requirements.	Extent of recognition, Relevant guidance.
2–222		ISO 10993–2 Second edition 2006–07–15 Biological evaluation of medical devices—Part 2: Animal welfare requirements.	Extent of recognition, Relevant guidance.
2–223		ASTM F2901–13, Standard guide for selecting tests to evaluate potential neurotoxicity of medical devices.	Relevant guidance.
2–225		ASTM F2567–06 (Reapproved 2010), Standard practice for testing for classical complement activation in serum by solid materials.	Relevant guidance.
		B. Sterility	
14–477	2–232	USP 39–NF34:2016 <151> Pyrogen Test	Transferred to Biocompatibility; Relevant guidance.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

III. Listing of New Entries

In table 2, FDA provides the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 044.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS

Recognition No.	Title of standard [1]	Reference No. and Date
	A. Biocompatibility	
2–233	Standard Test Method for Assessment of Intravascular Medical Device Materials on Partial Thromboplastin Time (PTT).	F2382–04 (Reapproved 2010).
2–234	Biological Evaluation of Medical Devices—Part 4: Selection of tests for interaction with blood [Including Amendment 1(2006)].	ANSI/AAMI/ISO 10993–4:2002/(R)2013 & A1:2006/(R)2013.
2–235	Biological Evaluation of Medical Devices—Part 4: Selection of tests for interaction with blood [Including Amendment 1(2006)].	ISO 10994–4 Second edition 2002–10–15 Amendment 1 2006–07–15.
2–236	Biological evaluation of medical devices—Part 17: Establishment of allowable limits for leachable substances.	ANSI/AAMI/ISO 10993–17:2002/(R)2012.
2–237	Biological evaluation of medical devices—Part 17: Establishment of allowable limits for leachable substances.	ISO 10993–17 First edition 2002–12–01.
2–238	Biological evaluation of medical devices—Part 18: Chemical characterization of materials.	ANSI/AAMI BE 83: 2006/(R)2011.
2–239	Biological evaluation of medical devices—Part 20: Principles and methods for immunotoxicology testing of medical devices.	ANSI/AAMI/ISO TIR 10993–20:2006.
2–240	Biological evaluation of medical devices—Part 20: Principles and methods for immunotoxicology testing of medical devices.	ISO/TS 10993–20 First edition 2006–08–01.
2–241	Cardiovascular biological evaluation of medical devices—Guidance for absorbable implants.	ISO/TR 37137 First edition 2014–05–15.
2–242	Cardiovascular biological evaluation of medical devices—Guidance for absorbable implants.	ANSI/AAMI/ISO TR 37137: 2014.
2–243	Biological evaluation of medical devices—Part 33: Guidance on tests to evaluate genotoxicity.	ISO/TR 10993–33:2015 First edition 2015–03–01.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

IV. List of Recognized Standards

FDA maintains the Agency's current list of FDA Recognized Consensus Standards in a searchable database that may be accessed directly at FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm.* FDA will incorporate the modifications and revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often if necessary. Beginning with Recognition List 033, FDA no longer announces minor revisions to the list of recognized consensus standards such as technical contact person, devices affected, processes affected, Code of Federal Regulations citations, and product codes.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under section 514 of the FD&C Act by submitting such recommendations, with reasons for the recommendation, to *standards@cdrh.fda.gov.* To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

You may obtain a copy of "Guidance on the Recognition and Use of Consensus Standards" by using the Internet. The Center for Devices and Radiological Health (CDRH) maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page, *http://www.fda.gov/MedicalDevices,* includes a link to standards-related documents including the guidance and the current list of recognized standards. After publication in the **Federal Register**, this notice announcing "Modification to the List of Recognized Standards, Recognition List Number: 044" will be available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.* You may access "Guidance on the Recognition and Use of Consensus Standards," and the searchable database for "FDA Recognized Consensus Standards" at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards.*

Dated: July 19, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–17570 Filed 7–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0190]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Requirements Under the Comprehensive Smokeless Tobacco Health Education Act of 1986, as Amended by the Family Smoking Prevention and Tobacco Control Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 25, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0671. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Requirements Under the Comprehensive Smokeless Tobacco Health Education Act of 1986, as Amended by the Family Smoking Prevention and Tobacco Control Act (OMB Control Number 0910–0671)—Extension

The Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) was enacted on June 22, 2009, amending the Federal Food, Drug, and Cosmetic Act and providing FDA with the authority to regulate tobacco products (Pub. L. 111–31; 123 Stat. 1776). Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (the Smokeless Tobacco Act) (15 U.S.C. 4402), as amended by section 204 of the Tobacco Control Act, requires, among other things, that all smokeless tobacco product packages and advertisements bear one of four required warning statements. Section 3(b)(3)(A) of the Smokeless Tobacco Act requires that the warnings be displayed on packaging and advertising for each brand of smokeless tobacco "in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer" to, and approved by, FDA.

This information collection-the submission to FDA of warning plans for smokeless tobacco products is statutorily mandated. The warning plans will be reviewed by FDA, as required by the Smokeless Tobacco Act, to determine whether the companies' plans for the equal distribution and display of warning statements on packaging and the quarterly rotation of warning statements in advertising for each brand of smokeless tobacco products comply with section 3 of the Smokeless Tobacco Act, as amended.

Based on the Federal Trade Commission's (FTC's) previous experience with the submission of warning plans and FDA's experience, FDA estimates that there are 52 companies affected by this information collection. To account for the entry of new smokeless tobacco companies that may be affected by this information collection, FDA is conservatively estimating the total number of annual respondents to this collection of information to be 100.

When the FTC requested an extension of their approved warning plan information collection in 2007, based on over 20 years implementing the warning plan requirements and taking into account increased computerization and improvements in electronic communication, the FTC estimated submitting an initial plan would take 60 hours. Based on FDA's experience over the past several years, FDA believes the estimate of 60 hours to complete an initial rotational plan continues to be reasonable.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Numbers of respondents	Numbers of responses per respondent	Total annual responses	Average burden per response	Total hours	Total capital costs
Submission of rotational plans for health warning statements	100	1	100	60	6,000	$1,200

[1] There are no operating and maintenance costs associated with this collection of information.

FDA estimates a total of 100 respondents will respond to this collection of information and take 60 hours to complete a rotational warning plan for a total of 6,000 burden hours. In addition, capital costs are based on 100 respondents mailing in their submission at a postage rate of $12 for a 5-pound parcel (business parcel post mail delivered from the furthest delivery zone). Therefore, FDA estimates that the total postage cost for mailing the rotational warning plans to FDA to be $1,200.

In the **Federal Register** of February, 19, 2016 (81 FR 8505), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was PRA related comment was received.

(Comment) The comment believes that warning plans should not be renewed every year, but should remain in force as long as necessary after their approval

(Response) FDA does not require that a previously FDA-approved warning plan be resubmitted. FDA reviews and approves warning plans only once, unless a submitter seeks to change the distribution or display of warnings on packages or rotation of warnings in advertisements, in which case the submission would be considered a supplement. The purpose of FDA's proposed extension is to account for the entry of new smokeless tobacco product brands and advertising onto the market place.

Dated: July 20, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–17569 Filed 7–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1853]

Unique Device Identification System: Form and Content of the Unique Device Identifier; Draft Guidance for Industry and Food and Drug Administration Staff; Availability and Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance for industry and FDA staff entitled "Unique Device Identification System: Form and Content of the Unique Device Identifier (UDI)." When finalized, this draft document will define the expected content and forms of the unique device identifier (UDI), to assist both labelers and FDA-accredited issuing agencies better ensure the UDIs developed under systems for the issuance of UDIs are in compliance with the unique device identification system rule (UDI Rule). This draft guidance is not the final version of the guidance nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 26, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1853 for "Unique Device Identification System: Form and Content of the Unique Device Identifier (UDI)." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled "Unique Device Identification System: Form and Content of the Unique Device Identifier (UDI)" to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5431, Silver Spring, MD 20993–0002. Alternatively, you may submit written requests for a single copy of the draft guidance to the Office of Communications, Outreach, and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: UDI Regulatory Policy Support, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 3303, Silver Spring, MD 20993–0002, 301–796–5995, *GUDIDSupport@fda.hhs.gov.* For questions about this document regarding CBER-regulated devices, contact the Office of Communication, Outreach, and Development (OCOD) at 1–800–835–4709 or 240–402–8010.

SUPPLEMENTARY INFORMATION:

I. Background

The UDI Rule, establishing the unique device identification system, was published on September 24, 2013 (78 FR 58786). The main objective of the UDI system is to adequately identify devices through distribution and use. Among other requirements, the UDI Rule requires the label and device packages of every medical device distributed in the United States to bear a UDI, unless an exception or alternative applies (21 CFR 801.20).

The UDI Rule is intended to create a standardized identification system for medical devices used in the United States that makes it possible to rapidly and definitively identify a device and some key attributes that affect its safe and effective use. The UDI Rule specifies that the labeler, as defined under § 801.3 (21 CFR 801.3), is responsible for complying with the UDI labeling (21 CFR part 801, subpart B) and Global Unique Device Identification Database (GUDID) submission (21 CFR part 830, subpart E) requirements. The UDI Rule also requires UDIs to be issued under a system operated by an FDA-accredited issuing agency (21 CFR 830.20(a)). Each labeler, therefore, must work with one or more FDA-accredited issuing agencies to develop UDIs for devices that are required to bear a UDI. In order for there to be an effective identification system, it is essential that the FDA-accredited issuing agencies develop and operate systems for the assignment of UDIs that allow labelers using these systems to be in compliance with UDI labeling requirements.

In this guidance, when finalized, we describe the two forms of a UDI and clarify the content of the UDI, including the data delimiters that identify specific data elements within the UDI. The order of the data in a UDI and UDI carrier are discussed as well.

The UDI, as defined under § 801.3, is an identifier that adequately identifies a device through its distribution and use. A UDI is composed of: (1) A device identifier (DI), (2) typically one or more production identifiers (PIs) when included in a device label, and (3) the data delimiters for the DI and PIs included in the UDI. The regulation at § 801.40(a) (21 CFR 801.40(a)) specifies that the UDI must be presented in both easily readable plain-text and automatic identification and data capture (AIDC) technology forms on the label of the device and on each device package. For those devices required to be directly marked with a UDI under 21 CFR 801.45, the UDI may be provided through either or both forms, or any alternative technology that will provide the UDI of the device on demand. "Easily readable plain-text" means the legible interpretation of the data characters encoded in the AIDC form of the full UDI, including the data delimiters. The easily readable plain-text form of the UDI should include the DI, any PIs, and data delimiters contained in the UDI. The UDI Rule does not require the use of specific forms of AIDC or specific AIDC technologies to present the UDI, and labelers may choose to use more than one type of AIDC technology form. The AIDC form of the UDI must be in a format that can be read by a bar code scanner or some other AIDC technology. If a labeler choses a bar code form of AIDC, we expect that the bar code form of the UDI will be tested for print quality.

We interpret §§ 801.3 and 801.40 as specifying that a UDI is composed solely of a single DI and one or more of the five PIs listed in §§ 801.3 and 801.40(b), along with the data delimiters for the DI and PIs. While some of the FDA-accredited issuing agencies may allow for non-UDI elements, such as quantity, in the UDI carrier, we do not recognize any such additional non-UDI elements as being part of the UDI. For the purposes of this draft guidance, "data delimiter" means a defined character or set of characters that identifies specific data elements within an encoded data string. The data delimiters indicate the DI value or the PI values that follow each data delimiter within the UDI, and may also indicate other non-UDI elements that may be included within the UDI carrier. Data delimiters for the DI and PIs should be included in the UDI. If non-UDI elements are included in the UDI carrier, separate data delimiters for any these non-UDI elements outside the scope of a UDI should be included in the UDI carrier. Data delimiters should be included in both the easily readable plain-text and AIDC technology forms of the UDI. The data delimiters vary based on the FDA-accredited issuing agencies, and consist of a specific set of characters used to identify the information immediately following the data delimiter.

For purposes of this draft guidance, we define "UDI carrier" as the means to convey the UDI and any non-UDI elements by using easily readable plain-text and AIDC forms. In the UDI carrier, the data represented in the UDI should precede any non-UDI elements and should be distinguishable from the UDI elements. The easily readable plain-text form of the UDI should be ordered to specify the DI first, followed by the PIs. If there are any non-UDI elements in the UDI carrier, the non-UDI elements should follow the PIs that are part of the UDI. For more information on non-UDI elements capable of being included in the UDI carrier, labelers should contact their FDA-accredited issuing agency.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on "Unique Device Identification System: Form and Content of the Unique Device Identifier (UDI)". It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Request for Comments

FDA is seeking additional information on this issue. FDA is particularly interested in receiving information relating to the following question: Are there any additional standards, in addition to those referenced in this draft guidance, that should be used to determine the print quality of the AIDC form of the UDI?

IV. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm* or at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of "Unique Device Identification System: Form and Content of the Unique Device Identifier (UDI)" may send an email request to *CDRH-Guidance@fda.hhs.gov* or *ocod@fda.hhs.gov,* or by calling 1–800–835–4709 or 240–402–7800, to receive an electronic copy of the document. Please use the document number GUD1500035 to identify the guidance you are requesting.

V. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information described in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485, and the collections of information in 21 CFR part 830 have been approved under OMB control number 0910–0720.

Dated: July 20, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–17554 Filed 7–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0879]

Agency Information Collection Activities; Proposed Collection; Comment Request; Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice invites comments on the information collection provisions of our regulations requiring reporting and recordkeeping for processors and importers of fish and fishery products.

DATES: Submit either electronic or written comments on the collection of information by September 26, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–N–0879 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products—21 CFR Part 123

OMB Control Number 0910–0354—Extension

FDA regulations in part 123 (21 CFR part 123) mandate the application of hazard analysis and critical control point (HACCP) principles to the processing of seafood. HACCP is a preventive system of hazard control designed to help ensure the safety of foods. The regulations were issued under FDA's statutory authority to regulate food safety, including section 402(a)(1) and (4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1) and (4)).

Certain provisions in part 123 require that processors and importers of seafood collect and record information. The HACCP records compiled and maintained by a seafood processor primarily consist of the periodic observations recorded at selected monitoring points during processing and packaging operations, as called for in a processor's HACCP plan (*e.g.,* the values for processing times, temperatures, acidity, etc., as observed at critical control points). The primary purpose of HACCP records is to permit a processor to verify that products have been produced within carefully established processing parameters (critical limits) that ensure that hazards have been avoided.

HACCP records are normally reviewed by appropriately trained employees at the end of a production lot or at the end of a day or week of production to verify that control limits have been maintained, or that appropriate corrective actions were taken if the critical limits were not maintained. Such verification activities are essential to ensure that the HACCP system is working as planned. A review of these records during the conduct of periodic plant inspections also permits FDA to determine whether the products have been consistently processed in conformance with appropriate HACCP food safety controls.

Section 123.12 requires that importers of seafood products take affirmative steps and maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123. These records are also to be made available for review by FDA as provided in § 123.12(c).

The time and costs of these recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the type and number of products involved, and on the nature of the equipment or instruments required to monitor critical control points. The burden estimate in table 1 includes only those collections of information under the seafood HACCP regulations that are not already required under other statutes and regulations. The estimate also does not include collections of information that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (21 CFR 1240.60) is a customary and usual practice among seafood processors. Consequently, the estimates in table 1 account only for information collection and recording requirements attributable to part 123.

Description of respondents: Respondents to this collection of information include processors and importers of seafood.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section [2]	Number of recordkeepers	Number of records per recordkeeper [3]	Total annual records	Average burden per recordkeeping [4]	Total hours
123.6(a), (b), and (c); Prepare hazard analysis and HACCP plan	50	1	50	16	800
123.6(c)(5); Undertake and prepare records of corrective actions	15,000	4	60,000	.30 (18 minutes)	18,000
123.8(a)(1) and (c); Reassess hazard analysis and HACCP plan	15,000	1	15,000	4	60,000
123.12(a)(2)(ii); Verify compliance of imports and prepare records of verification activities	4,100	80	328,000	.20 (12 minutes)	65,600
123.6(c)(7); Document monitoring of critical control points	15,000	280	4,200,000	.30 (18 minutes)	1,260,000
123.7(d); Undertake and prepare records of corrective actions due to a deviation from a critical limit	6,000	4	24,000	.10 (6 minutes)	2,400
123.8(d); Maintain records of the calibration of process-monitoring instruments and the performing of any periodic end-product and in-process testing	15,000	47	705,000	.10 (6 minutes)	70,500
123.11(c); Maintain sanitation control records	15,000	280	4,200,000	.10 (6 minutes)	420,000
123.12(c); Maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123	4,100	80	328,000	.10 (6 minutes)	32,800
123.12(a)(2); Prepare new written verification procedures to verify compliance of imports	41	1	41	4	164
Total					1,930,264

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] These estimates include the information collection requirements in the following sections:
§ 123.16—Smoked Fish—process controls (see § 123.6(b));
§ 123.28(a)—Source Controls—molluscan shellfish (see § 123.6(b));
§ 123.28(c) and (d)—Records—molluscan shellfish (see § 123.6(c)(7)).

[3] Based on an estimated 280 working days per year.

[4] Estimated average time per 8-hour work day unless one-time response.

We base this hour burden estimate on our experience with the application of HACCP principles in food processing. Further, the burdens have been estimated using typical small seafood processing firms as a model because these firms represent a significant proportion of the industry. The hour burden of HACCP recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the size of the facility and complexity of the HACCP control scheme (*i.e.,* the number of products and the number of hazards controlled); the daily frequency that control points are monitored and values recorded; and also on the extent that data recording time and cost are minimized by the use of automated data logging technology. The burden estimate does not include burden hours for activities that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (§ 1240.60) is a customary and usual practice among seafood processors.

Based on our records, we estimate that there are 15,000 processors and 4,100 importers. We estimate that 50 processors will undertake the initial preparation of a hazard analysis and HAACP plan (§ 123.6(a), (b), and (c)). We estimate the burden for the initial preparation of a hazard analysis and HAACP plan to be 16 hours per processor for a total burden of 800 hours.

We estimate that all processors (15,000 processors) will undertake and keep records of four corrective action plans (§ 123.6(c)(5)) for a total of 60,000 records. We estimate the burden for the preparation of each record to be .30 hours for a total burden of 18,000 hours. We estimate that all processors (15,000 processors) will annually reassess their hazard analysis and HACCP plan (§ 123.8(a)(1) and (c)). We estimate the burden for the reassessment of the hazard analysis and HAACP plan to be 4 hours per processor for a total burden of 60,000 hours.

We estimate that all importers (4,100 importers) will take affirmative steps to verify compliance of imports and prepare 80 records of their verification activities (§ 123.12(a)(2)(ii)) for a total of 328,000 records. We estimate the burden for the preparation of each record to be .20 hours for a total burden of 65,600 hours.

We estimate that all processors (15,000 processors) will document the monitoring of critical control points (§ 123.6(c)(7)) at 280 records per processor for a total of 4,200,000 records. We estimate the burden for the preparation of each record to be .30 hours for a total burden of 1,260,000 hours.

We estimate that 40 percent of all processors (6,000 processors) will maintain records of any corrective actions taken due to a deviation from a critical limit (§ 123.7(d) at 4 records per processor for a total of 24,000 records.

We estimate the burden for the preparation of each record to be .10 hours for a total burden of 2,400 hours.

We estimate that all processors (15,000 processors) will maintain records of the calibration of process-monitoring instruments and the performing of any periodic end-product and in-process testing (§ 123.8(d)) at 47 records per processor for a total of 705,000 records. We estimate the burden for the preparation of each record to be .10 hours for a total burden of 70,500 hours.

We estimate that all processors (15,000 processors) will maintain sanitation control records (§ 123.11(c)) at 280 records per processor for a total of 4,200,000 records. We estimate the burden for the preparation of each record to be .10 hours for a total burden of 420,000 hours.

We estimate that all importers (4,100 importers) will maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123 (§ 123.12(c)). We estimate that 80 records will be prepared per importer for a total of 328,000 records. We estimate the burden for the preparation of each record to be .10 hours for a total burden of 32,800 hours.

We estimate that 1 percent of all importers (41 importers) will require new written verification procedures to verify compliance of imports (§ 123.12(a)(2)). We estimate the burden for preparing the new procedures to be 4 hours per importer for a total burden of 164 hours.

Dated: July 19, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–17571 Filed 7–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the Presidential Commission for the Study of Bioethical Issues

AGENCY: Presidential Commission for the Study of Bioethical Issues, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: The Presidential Commission for the Study of Bioethical Issues (the Commission) will conduct its twenty-sixth meeting on August 31, 2016. At this meeting, the Commission will reflect on the past, present, and future impact of national bioethics advisory bodies. Topics will include the history of national bioethics advisory bodies and their contributions to health policy, perspectives about similar bodies elsewhere, and discussion about what the future holds for groups like the Commission.

DATES: The meeting will take place August 31, 2016, from 9 a.m. to approximately 4 p.m.

ADDRESSES: Annenberg Public Policy Center, 202 S. 36th St., Philadelphia, PA 19104.

FOR FURTHER INFORMATION CONTACT: Lisa M. Lee, Executive Director, Presidential Commission for the Study of Bioethical Issues, 330 C Street SW., Suite L001, Washington, DC 20201. Telephone: 202–795–7689. Email: *Lisa.Lee@bioethics.gov.* Additional information may be obtained at *www.bioethics.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of 1972, Public Law 92–463, 5 U.S.C. app. 2, notice is hereby given of the twenty-sixth meeting of the Commission. The meeting will be open to the public with attendance limited to space available. The meeting will also be webcast at *www.bioethics.gov.*

Under authority of Executive Order 13521, dated November 24, 2009, the President established the Commission. The Commission is an expert panel of not more than 13 members who are drawn from the fields of bioethics, science, medicine, technology, engineering, law, philosophy, theology, or other areas of the humanities or social sciences. The Commission advises the President on bioethical issues arising from advances in biomedicine and related areas of science and technology. The Commission seeks to identify and promote policies and practices that ensure scientific research, health care delivery, and technological innovation are conducted in a socially and ethically responsible manner.

The main agenda for the Commission's twenty-sixth meeting is to reflect upon the role of national bioethics advisory bodies, both in the US and abroad, in the past, present, and future.

The Commission welcomes input from anyone wishing to provide public comment on any issue before it. Respectful consideration of opposing views and active participation by citizens in public exchange of ideas enhances overall public understanding of the issues at hand and conclusions reached by the Commission. The Commission is particularly interested in receiving comments and questions during the meeting that are responsive to specific sessions. Written comments will be accepted in advance, during, and after the meeting and are especially welcome. Comments will be publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Written comments will be accepted by email to *info@bioethics.gov,* or by mail to the following address: Public Commentary, Presidential Commission for the Study of Bioethical Issues, 330 C Street SW., Suite L001, Washington, DC 20201. To accommodate as many individuals as possible, the time for each question or comment may be limited. If the number of individuals wishing to pose a question or make a comment is greater than can reasonably be accommodated during the scheduled meeting, the Commission may make a random selection. Time permitting, we will read aloud as many comments as possible.

Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, should notify Esther Yoo by telephone at (202) 795–7689, or email at *Esther.Yoo@bioethics.gov* at least one week in advance of the meeting. The Commission will make every effort to accommodate persons who need special assistance.

Dated: July 8, 2016.

Lisa M. Lee,

Executive Director, Presidential Commission for the Study of Bioethical Issues.

[FR Doc. 2016–17620 Filed 7–25–16; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Conduct the initial scientific peer review and assess the merit of Research Centers in Injury and Peri-operative Sciences.

Date: August 2, 2016.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, Building 45, Room 3AN18, Bethesda, MD 20892–4874, (301)435–0965, *newmanla2@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Conduct the initial scientific peer review and assess the merit of Clinical Trail Research Project Grants.

Date: August 4, 2016.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, Building 45, Room 3AN18, Bethesda, MD 20892–4874, (301)435–0965, *newmanla2@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: July 20, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17561 Filed 7–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, NHLBI K08 Review Meeting.

Date: August 15, 2016.

Time: 12:00 p.m. to 12:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Keith A. Mintzer, Ph.D., Scientific Review Officer, Office of Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–594–7947, *mintzerk@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 20, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17548 Filed 7–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Support of Competitive Research (SCORE).

Date: August 2, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3An.12N, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Margaret J. Weidman, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892, 301–594–3663, *weidmanma@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: July 20, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17560 Filed 7–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Clinical, Treatment and Health Services Research Review Subcommittee.

Date: October 11, 2016.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Alcohol & Alcoholism, Terrace Level Room 508–509, 5635 Fishers Lane, Rockville, MD 20852.

Contact Person: Ranga V. Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Epidemiology, Prevention and Behavior Research Review Subcommittee.

Date: October 18, 2016.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Alcohol & Alcoholism, Terrace Level Room 508–509, 5635 Fishers Lane, Rockville, MD 20852.

Contact Person: Anna Ghambaryan, M.D., Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2019, Rockville, MD 20852, 301–443–4032, *anna.ghambaryan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: July 20, 2016.

Melanie J. Gray-Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17547 Filed 7–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Medication Assisted Treatment for Opioid Use Disorders Reporting Requirements

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services (HHS).

ACTION: Notice of Public Listening Session.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) announces that it will hold a public listening session on August 2, 2016, to solicit comments regarding the supplemental notice of proposed rulemaking, "Medication Assisted Treatment for Opioid Use Disorders Reporting Requirements." The session will be held in Rockville, MD, to obtain direct public input from stakeholders on the proposed reporting requirements.

DATES: The listening session will be held on August 2, 2016, from 3:00 to 5:00 p.m.

ADDRESS: *Participation:* The listening session will be held at the Substance Abuse and Mental Health Services Administration at 5600 Fishers Lane, Rockville, MD 20857, Room 5N54.

SAMHSA will post the agenda and logistical information on how to participate in person or by phone on *https://www.eventbrite.com/e/public-listening-session-mat-for-opioid-use-disorder-reporting-requirements-tickets-26685870156* in advance of the listening session.

The session is open to the public and the entire meeting's proceedings will be recorded and made publicly available. Interested parties may participate in person or by phone. Capacity is limited and registration is required. To register, go to *https://www.eventbrite.com/e/public-listening-session-mat-for-opioid-use-disorder-reporting-requirements-tickets-26685870156.* Registration will be open until we meet maximum capacity. In addition to attending the session in person and joining via phone, the Agency offers several ways to provide comments in advance of the listening session, as enumerated below. The forum will begin with opening remarks from the SAMHSA official charged with moderating the session. The session is accessible to persons with disabilities.

You may submit comments using any of the following methods:

- *Mail:* The Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 13E21C, Rockville, MD 20857
- *Hand Delivery or Courier:* 5600 Fishers Lane, Room 13E21C, Rockville, MD 20857 between 9 a.m. and 5 p.m., ET, Monday through Friday, except federal holidays.
- *Email: WaiverRegulations@SAMHSA.hhs.gov.*

Each submission must include the Agency name and the docket number for this notice. Comments must be received by 5:00 p.m. ET on August 8, 2016.

FOR FURTHER INFORMATION CONTACT: For information concerning the listening session or the live webcast, please contact: Phillip Ames, Special Assistant, SAMHSA, 5600 Fishers Lane, 18E61, Rockville, MD 20857, (240) 276–2129 or email *WaiverRegulations@SAMHSA.hhs.gov.*

Background

On March 30, 2016 HHS issued a Notice of Proposed Rulemaking (NPRM) entitled "Medication Assisted Treatment for Opioid Use Disorders" in the **Federal Register**. On July 8, 2016, HHS published a final version of this rule with the same title. The final rule increases access to medication-assisted treatment (MAT) with certain medications, including buprenorphine and combination buprenorphine/naloxone (hereinafter referred to as buprenorphine) medications, in office-based setting as authorized under section 303(g)(2) of the Controlled Substances Act (CSA) (*21 U.S.C. 823*(g)(2)). Section 303(g)(2) of the CSA allows individual practitioners to dispense or prescribe Schedule III, IV, or V controlled substances that have been approved by the Food and Drug Administration (FDA) without obtaining a separate registration to dispense narcotic maintenance and detoxification drugs under section 303(g)(1). Section 303(g)(2)(B)(iii) of the CSA also allows qualified practitioners who file an initial notification of intent (NOI) to treat a maximum of 30 patients at a time with medications covered under section 303(g)(2)(C). After 1 year, the practitioner may file a second NOI indicating his/her intent to treat up to 100 patients at a time. The final rule expands access to MAT by allowing eligible practitioners to request approval to treat up to 275 patients under section 303(g)(2) of the CSA. The final rule includes requirements to help ensure that patients receive the full array of services that comprise evidence-based MAT and minimize the risk that the medications provided for treatment are misused or diverted.

The March 30, 2016 NPRM included a set of reporting requirements for practitioners who were approved to treat patients at the higher patient limit. The purpose of the proposed reporting requirements was to help HHS assess practitioner compliance with the additional responsibilities of practitioners who are authorized to treat up to the higher patient limit. The proposed reporting requirements are as follows:

a. The average monthly caseload of patients received buprenorphine-based MAT, per year
b. Percentage of active buprenorphine patients (patients in treatment as of reporting date) that received psychosocial or case management services (either by direct provision or by referral) in the past year due to:
1. Treatment initiation
2. Change in clinical status
c. Percentage of patients who had a prescription drug monitoring program query in the past month
d. Number of patients at the end of the reporting year who:
1. Have completed an appropriate course of treatment with buprenorphine in order for the patient to achieve and sustain recovery
2. Are not being seen by the provider due to referral by the provider to a more or less intensive level of care
3. No longer desire to continue use of buprenorphine
4. Are no longer receiving buprenorphine for reasons other than 1–3.

HHS received a large number of comments on these proposed reporting requirements. Some commenters expressed concerns that these requirements were too cumbersome and would serve as a disincentive to providers who are considering increasing their patient limit, while other commenters felt that the reporting requirements were not stringent enough. Because of the large number of comments and the wide variability in their scope, HHS issued a supplemental NPRM, titled, "Medication Assisted Treatment for Opioid Use Disorders Reporting Requirements" to solicit additional public comments about the proposed reporting requirements.

In addition to seeking general comments on the proposed reporting requirements, HHS seeks comment on the following questions:

a. Are there different or additional elements that should be reported in order to assist HHS in ensuring compliance with the final rule?
b. Are there ways in which some elements can be combined that will lessen the burden for reporting practitioners while maintaining the important function of collecting information that ensure compliance with the final rule?
c. Are there other ways that HHS can collect the necessary information to ensure compliance with the final rule?
d. Would it be less burdensome to report on the number of patients in treatment for each month of the reporting period that:
(i) Were provided counseling services at the same location as the practitioner, and how frequently those patients utilized the counseling services;
(ii) The practitioner referred for counseling services at a different location?
e. Would it be less burdensome to report on the number of patients at the end of the reporting year who had terminated utilization of covered medications?
f. Are there other suggested changes that would be less burdensome while maintaining the important function of collecting information that ensure compliance with the final rule?

SAMHSA will hold a public listening session to provide all interested parties the opportunity to share their views on the proposed reporting requirements and the additional questions. Members of the public are invited to attend and view the proceedings, with space available on a first-come, first-served basis (based on registration).

Draft Agenda for the August 2, 2016 Public Listening Session

—Welcome and introductions
—Proposed reporting requirements
—Open comment period
—Additional questions

Summer King,
Statistician.

[FR Doc. 2016–17532 Filed 7–25–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0449]

Area Maritime Security Advisory Committee (AMSC), Eastern Great Lakes and Regional Sub-Committee Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Notice; Solicitation for Membership.

SUMMARY: This notice requests individuals interested in serving on the Area Maritime Security Committee (AMSC), Eastern Great Lakes, and the four regional sub-committees: Northeast Ohio Region, Northwestern Pennsylvania Region, Western New York Region, and Eastern New York Region submit their applications for membership to the Captain of the Port, Buffalo. The Committee assists the Captain of the Port, Buffalo, in developing, reviewing, and updating the Area Maritime Security Plan for their area of responsibility.

DATES: Requests for membership should reach the U.S. Coast Guard Captain of the Port, Buffalo, before August 25, 2016.

ADDRESSES: Applications for membership should be submitted to the Captain of the Port at the following address: Captain of the Port, Buffalo, Attention: LCDR Karen Jones, 1 Fuhrmann Boulevard, Buffalo, NY 14203–3189.

FOR FURTHER INFORMATION CONTACT: For questions about submitting an application, or about the AMSC in general, contact:

For the Northeast Ohio Region Sub-Committee Executive Coordinator: Mr. Peter Killmer at 216–937–0136.

For the Northwestern Pennsylvania Region Sub-Committee Executive Coordinator: Mr. Joseph Fetscher at 216–937–0126.

For the Western New York Region Sub-Committee Executive Coordinator: Mr. Michael Messina at 716–843–9574.

For the Eastern New York Region Sub-Committee Executive Coordinator: Mr. Ralph Kring at 315–343–1217.

SUPPLEMENTARY INFORMATION:

Authority

Section 102 of the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295) added section 70112 to Title 46 of the U.S. Code, and authorized the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Advisory Committees for any port area of the United States. (See 33 U.S.C. 1226; 46 U.S.C.; 33 CFR 1.05–1, 6.01; Department of Homeland Security Delegation No. 0170.1). The MTSA includes a provision exempting these AMSCs from the Federal Advisory Committee Act (FACA), Public Law 92–436, 86 Stat. 470 (5 U.S.C. App.2). The AMSCs assist the Captain of the Port in the development, review, update, and exercising of the Area Maritime Security Plan for their area of responsibility. Such matters may include, but are not limited to: Identifying critical port infrastructure and operations; identifying risks (threats, vulnerabilities, and consequences); determining mitigation strategies and implementation methods; developing and describing the process to continually evaluate overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied; and providing advice to, and assisting the Captain of the Port in developing and maintaining the Area Maritime Security Plan.

AMSC Membership

Members of the AMSC should have at least five years of expertise related to maritime or port security operations. The AMSC Eastern Great Lakes Committee has 16 members. The Northeast Ohio Region Sub-Committee has 31 members. The Northwestern Pennsylvania Region Sub-Committee has 23 members. The Western New York Region Sub-Committee has 29 members. The Eastern New York Region Sub-Committee has 60 members. We are seeking to fill the following vacancies with this submission:

(A) Northeast Ohio Region Sub-Committee (2 members): (1) Executive Board member representing the maritime (on-water) Port Harbormaster community of Northeast Ohio {*e.g.*, qualified harbormasters operating in local ports [list not all inclusive] of Vermilion, Lorain, Cleveland, Fairport Harbor, Ashtabula, Conneaut, etc.}; and (2) Executive Board member to serve as Vice Chairperson of the Sub-Committee and concurrently as member of the Eastern Great Lakes AMSC when so convened by the FMSC.

(B) Northwestern Pennsylvania Region Sub-Committee (no new members): No applications are being taken for this Sub-Committee at this time.

(C) Western New York Region Sub-Committee (no new members): No applications are being taken for this Sub-Committee at this time.

(D) Eastern New York Region Sub-Committee (no new members): No applications are being taken for this Sub-Committee at this time.

Applicants may be required to pass an appropriate security background check prior to appointment to the Committee. Applicants must register with and remain active as Coast Guard HOMEPORT users if appointed. Members' terms of office will be for five years; however, a member is eligible to serve additional terms of office. Members will not receive any salary or other compensation for their service on an AMSC. In accordance with 33 CFR 103, members may be selected from the Federal, Territorial, or Tribal governments; the State government and political subdivisions of the State; local public safety, crisis management, and emergency response agencies; law enforcement and security organizations; maritime industry, including labor; other port stakeholders having a special competence in maritime security; and port stakeholders affected by security practices and policies.

The Department of Homeland Security (DHS) does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all of its recruitment actions.

Request for Applications

Those seeking membership are not required to submit formal applications to the local Captain of the Port, however, because we do have an obligation to ensure that a specific number of members have the prerequisite maritime security experience, we encourage the submission of resumes highlighting experience in the maritime and security industries.

Dated: June 7, 2016.

B. W. Roche,

Captain, U.S. Coast Guard,

Captain of the Port, Buffalo.

[FR Doc. 2016–17545 Filed 7–25–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of December 22, 2015.

DATES: *Effective Dates:* The accreditation and approval of Inspectorate America Corporation as commercial gauger and laboratory became effective on December 22, 2015. The next triennial inspection date will be scheduled for December 2018.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, Road 127 KM 19.1, Tallaboa-Peñuelas, P.R. 00624, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Inspectorate America Corporation is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Inspectorate America Corporation is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–48	ASTM D–4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–13	ASTM D–4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry.
27–04	ASTM D–95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–08	ASTM D–86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.

CBPL No.	ASTM	Title
27–11	ASTM D–445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–06	ASTM D–473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–50	ASTM D–93	Standard Test Methods for Flash Point by Penske-Martens Closed Cup Tester.
27–02	ASTM D–1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	ASTM D–4006	Standard Test Method for Water in Crude Oil by Distillation.
27–58	ASTM D–5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories

Dated: July 5, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–17576 Filed 7–25–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of September 30, 2015.

DATES: *Effective Dates:* The accreditation and approval of Inspectorate America Corporation as commercial gauger and laboratory became effective on September 30, 2015. The next triennial inspection date will be scheduled for September 2018.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 12211 Port Rd., Seabrook, TX 77586, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Inspectorate America Corporation is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
5	Metering.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Inspectorate America Corporation is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–48	ASTM D–4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–04	ASTM D–95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–08	ASTM D–86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–46	ASTM D–5002	Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer.
27–05	ASTM D–4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories

Dated: July 5, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–17577 Filed 7–25–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec Services, LLC, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of AmSpec Services, LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec Services, LLC, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of January 20, 2016.

DATES: *Effective Dates:* The accreditation and approval of AmSpec Services, LLC, as commercial gauger and laboratory became effective on January 20, 2016. The next triennial inspection date will be scheduled for January 2019.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec Services, LLC, 1836 Miller Cut Off Rd., La Porte, TX 77571, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. AmSpec Services, LLC is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties.
12	Calculations.
17	Maritime Measurement.

AmSpec Services, LLC is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products.
27–03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–54	D1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories

Dated: July 6, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–17578 Filed 7–25–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Laboratory Service, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Laboratory Service, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Laboratory Service, Inc., has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of June 17, 2015.

DATES: The accreditation and approval of Laboratory Service, Inc., as commercial gauger and laboratory became effective on June 17, 2015. The next triennial inspection date will be scheduled for June 2018.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Laboratory Service, Inc., 85 Lafayette St., Carteret, NJ 07008, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Laboratory Service, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank gauging.
7	Temperature determination.
8	Sampling.
12	Calculations.
17	Maritime measurement.

Laboratory Service, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
Pending	D1364	Standard Test Method for Water in Volatile Solvents (Karl Fischer Reagent Titration Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*

Dated: July 6, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–17581 Filed 7–25–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of AmSpec Services, LLC, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of AmSpec Services, LLC, as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec Services, LLC, has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of March 24, 2016.

DATES: *Effective Dates:* The accreditation and approval of AmSpec Services, LLC, as commercial gauger and laboratory became effective on March 24, 2016. The next triennial inspection date will be scheduled for March 2019.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that AmSpec Services, LLC, 11725 Port Rd., Seabrook, TX 77586, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. AmSpec Services, LLC is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties.
12	Calculations.
17	Maritime Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: July 6, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2016–0048]

Privacy Act of 1974; Department of Homeland Security, U.S. Customs and Border Protection, DHS/CBP–001, Import Information System, System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to update an existing systems of records titled, "DHS/U.S. Customs and Border Protection (CBP)–001 Import Information System (IIS) System of Records" (August 17, 2015, 80 FR 49256). This system of records will continue to permit DHS/CBP to collect and maintain records on all commercial goods imported into the United States, as well as information pertaining to the carrier, broker, importer, and other persons associated with the manifest, import, or commercial entry transactions for the goods.

DHS/CBP is updating this system of records notice to provide notice that IIS records may be stored on both DHS unclassified and classified networks to allow for analysis and vetting consistent with existing DHS/CBP authorities and purposes and this published notice. Furthermore, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

This system of records notice was previously published in the **Federal**

Register on August 17, 2015 (80 FR 49256). DHS/CBP previously published a Final Rule for the IIS system of records in the **Federal Register** on March 17, 2016 (81 FR 14369), which remains in effect. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before August 25, 2016. This updated system will be effective August 25, 2016.

ADDRESSES: You may submit comments, identified by docket number DHS–2016–0048 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Debra L. Danisek (202) 344–1610, Acting CBP Privacy Officer, Office of the Commissioner, U.S. Customs and Border Protection, Washington, DC 20229. For privacy questions, please contact: Jonathan R. Cantor, (202) 343–1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) proposes to update an existing systems of records titled, "DHS/CBP–001 Import Information System (IIS) System of Records" (August 17, 2015, 80 FR 49256). This system of records will continue to collect and maintain records on all commercial goods imported into the United States, as well as information pertaining to the carrier, broker, importer, and other persons associated with the manifest, import, or commercial entry transactions for the goods.

DHS/CBP is updating this system of records notice (SORN) to provide notice that IIS records may be stored on both DHS unclassified and classified networks to allow for analysis and vetting consistent with existing DHS/CBP authorities and purposes and this published notice. Furthermore, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

DHS/CBP–001 IIS, issued on August 17, 2015 (80 FR 49256), consolidated, updated, and renamed as one SORN the information previously contained in two DHS SORNs titled, "DHS/CBP–001 Automated Commercial Environment/International Trade Data System (ACE/ITDS) System of Records" (71 FR 3109, January 19, 2006) and "DHS/CBP–015 Automated Commercial System (ACS) System of Records" (73 FR 77759, December 19, 2008). The Automated Commercial System, a decades-old trade information database and information technology (IT) system, was deployed to track, control, and process all commercial goods imported into the United States. ACE, part of a multi-year modernization effort since 2001 to replace ACS, continues to be designed to manage CBP's import trade data and related transaction information. ACE/ITDS serves three sets of core stakeholders: The internal DHS/CBP users, Partner Government Agencies (PGA), and the trade community. ACE is the IT backbone for the ITDS, an interagency initiative formalized under the SAFE Port Act of 2006 to create a single window for the trade community and PGAs involved in importing and exporting. DHS/CBP has provided notice to the public and trade community that in the future, the ACS IT system will be fully phased out and replaced by ACE. DHS/CBP published the IIS system of records to identify a single repository for import trade information and allow DHS/CBP to collect and maintain records on all commercial goods imported into the United States, along with related information about persons associated with those transactions, and manifest information.

DHS/CBP is updating the system location to inform the public that certain IIS information may be replicated from the operational IT system, ACE/ITDS, and maintained on unclassified and classified systems and networks to allow for analysis and vetting consistent with existing DHS/CBP authorities and purposes and this published notice. Furthermore, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

Consistent with DHS's information-sharing mission, information stored in the DHS/CBP–001 IIS system of records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this SORN and as otherwise authorized under the Privacy Act.

DHS/CBP will not assert any exemptions with regard to information provided by or on behalf of an individual. However, this data may be shared with law enforcement and/or intelligence agencies pursuant to the routine uses identified in the IIS SORN and as otherwise authorized under the Privacy Act. The Privacy Act requires that DHS maintain an accounting of such disclosures. Disclosing the fact that a law enforcement and/or intelligence agency has sought particular records may interfere with or disclose techniques and procedures related to ongoing law enforcement investigations. As such, DHS has issued a Final Rule for the IIS system of records in the **Federal Register** on March 17, 2016 (81 FR 14369), which remains in effect. This updated system will be included in the Department of Homeland Security's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all persons when systems of records maintain information on U.S. citizens, lawful permanent residents, and non-immigrant aliens.

Below is the description of the DHS/CBP–001 Import Information System (IIS) System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of these systems of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS:

Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)–001.

SYSTEM NAME:

DHS/CBP–001 Import Information System (IIS).

SECURITY CLASSIFICATION:

Unclassified. The data may be retained on the classified networks but this does not change the nature and character of the data until it is combined with classified information.

SYSTEM LOCATION:

DHS/CBP maintains records in the operational information technology (IT) system at the DHS/CBP Headquarters in Washington, DC and field offices. DHS/CBP also replicates records from the operational system and maintains them on other unclassified and classified systems and networks.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals in this system include members of the public involved in the importation of merchandise and international trade, such as importers, brokers, carriers, manufacturers, shippers, consignees, cartmen/lightermen, filers, sureties, facility operators, foreign trade zone operators, drivers/crew, attorneys/consultants, and agents, in addition to persons required to file Customs Declarations for international mail transactions (including sender and recipient).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information maintained by ACE as part of the *user account creation process* includes:

- *Account Information*—Including Name of Company, Name of Company Officer, Title of Company Officer, Company Organization Structure, and Officer's Date of Birth (optional). For Operators, this information must match the name on the company's bond.
  - ○ *Account Owner Information*—Name, Application Data, Email, Date of Birth, Country, Address, and Business Phone Number.
  - ○ *Legal Entity Information*—Name, Application Data, Email, Country, Address, and Business Phone Number.
  - ○ *Point of Contact Information*—Name, Application Data, Email, Country, Date of Birth, Address, and Business Phone Number.
- *Business Activity Information*—Depending on the account type being established, CBP requires the following identifying information to set up an ACE portal account. Users are limited to a single identification number for the portal account being requested with the exception of: Importer, broker, filer, software vendor, service bureau, port authority, preparer, or surety agent, which can use up to three identifying numbers for each portal view:
  - ○ *Importer/Broker/Filer/Surety*—Importer Record Number; Filer Code; Taxpayer Identification Number (TIN) [*e.g.,* Internal Revenue Service (IRS) Employer Identification Number (EIN)/Social Security number (SSN)]; Surety Code.
  - ○ *Service Provider*—Standard Carrier Alpha Code (SCAC) or Filer Code; EIN/SSN.
  - ○ *Operator*—EIN/SSN; Bond Number; Facilities Information and Resources Management System (FIRMS) Code; Zone Number; Site Number. Operators must also note whether their background investigation has been completed by CBP, and whether their fingerprints are on file with CBP.
  - ○ *Cartman/Lighterman*—Cartman/Lighterman Identification Number; Customhouse License (CHL) Number; Passport Number; Country of Issuance; Date of Expiration; U.S. Visa Number; Birth Certification Number; Permanent Resident Card Number; Certificate of Naturalization; Certificate of U.S. Citizenship; Re-entry Permit Number (I–327); Refugee Permit Number; Other Identification (such as Military Dependent's Card, Temporary Resident Card, Voter Registration Card). A Cartman/Lighterman must also note whether his or her background investigation has been completed by CBP, and whether his or her fingerprints are on file with CBP.
  - ○ *Carriers*—SCAC; Bond Numbers; Importer Record for Type 2 Bond (if applicable).
  - ○ *Drivers/Crew*—Commercial Driver License (CDL) Number; State/Province of Issuance; Country; whether the Driver has an Enhanced CDL or is HAZMAT endorsed; Full Name; Date of Birth; Gender; Citizenship; Travel Documentation (and Country of Issuance) such as: Passport Number or Permanent Resident Card; or other type of identification including: SENTRI Card; NEXUS;[1] U.S. Visa (non-immigrant or immigrant); Permanent Resident Card; U.S. Alien Registration Card; U.S. Passport Card; DHS Refugee Travel Document; DHS Re-Entry Permit; U.S. Military ID Document; or U.S. Merchant Mariner Document.

Information maintained by ACE as part of the *trade facilitation process* includes:

- Filer Information
  - ○ *Importer of Record Name and Address*—The name and address, including the standard postal two-letter state or territory abbreviation, of the importer of record. The importer of record is defined as the owner or purchaser of the goods, or when designated by the owner, purchaser, or consignee, a licensed customs broker. The importer of record is the individual or firm liable for payment of all duties and meeting all statutory and regulatory requirements incurred as a result of importation, as described in 19 CFR. sec. 141.1(b).
  - ○ *Consignee Number*—IRS EIN, SSN, or CBP-assigned number of the consignee. This number must reflect a valid identification number filed with CBP via the CBP Form 5106 or its electronic equivalent.
  - ○ *Importer Number*—The IRS EIN, SSN, or CBP-assigned number of the importer of record.
  - ○ *Reference Number*—The IRS EIN, SSN, or CBP-assigned number of the individual or firm to whom refunds, bills, or notices of extension or suspension of liquidation are to be sent (if other than the importer of record and only when a CBP Form 4811 is on file).
  - ○ *Ultimate Consignee Name and Address*—The name and address of the individual or firm purchasing the merchandise or, if a consigned shipment, to whom the merchandise is consigned.
  - ○ *Broker/Filer Information*—A broker or filer name, address, and phone number.
  - ○ *Broker/Importer File Number*—A broker or importer internal file or reference number.
  - ○ *Bond Agent Information*—Bond agent name, SSN or a surety-created identification, and surety name.
  - ○ *Declarant Name, Title, Signature, and Date*—The name, job title, and signature of the owner, purchaser, or agent who signs the declaration. The month, day, and year when the declaration was signed.
  - ○ *Importer Business Description*—Including the Importer Dun & Bradstreet (DUNS) Number and the North American Industry Classification System (NAICS) number for Importer Business.
  - ○ *Senior Officers of the Importing Company*—Information pertaining to Senior Officers of the Importing Company with an importing or financial role in trade transactions: Position title; Name (First, Middle, Last); Business Phone; SSN (Optional); Passport

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[1] SENTRI and NEXUS are Trusted Traveler Cards used for expedited border crossing along the southern and northern borders, respectively. *See, http://www.cbp.gov/travel/trusted-traveler-programs.*

Number (Optional); Passport Country of Issuance (Optional).

○ *Additional Data Elements*—Filers may, on their own initiative, provide additional or clarifying information on the form provided such additional information does not interfere with the reporting of those required data elements.

• Supply Chain Information

○ *Manufacturer Information:*

▪ Manufacturer (or supplier) name;

▪ Manufacturer (or supplier) address;

▪ Foreign manufacturer identification code and/or shipper identification code;

▪ Foreign manufacturer name and/or shipper name; and

▪ Foreign manufacturer address and/or shipper address.

○ *Carrier Information:*

▪ *Importing Carrier*—For merchandise arriving in the United States by vessel, CBP records the name of the vessel that transported the merchandise from the foreign port of lading to the first U.S. port of unlading.

• Vessel Identifier Code;

• Vessel Name;

• Carrier Name;

• Carrier Address;

• Carrier codes (non-SSN) (Standard Carrier Agent Code (SCAC) for vessel carriers, International Air Transport Association (IATA) for air carriers);

• Department of Transportation (DOT) number,

• Tax Identification Number;

• DUNS;

• Organizational structure; and

• Insurance information including name of insurer, policy number, date of issuance, and amount.

• The carrier can create users and points of contact, and may also choose to store details associated with the driver and crew, conveyance, and equipment for purposes of expediting the creation of manifests.

▪ *Mode of Transport*—The mode of transportation by which the imported merchandise entered the U.S. port of arrival from the last foreign country. The mode of transport may include vessel, rail, truck, air, or mail.

▪ *Export Date*—The month, day, and year on which the carrier departed the last port (or airport, for merchandise exported by air) in the exporting country.

○ Liquidator identification (non-SSN);

○ Seller (full name and address or a widely accepted industry number such as a DUNS number);

○ Buyer (full name and address or a widely accepted industry number such as a DUNS number);

○ Ship to party name;

○ Consolidator (stuffer);

○ Foreign trade zone applicant identification number;

○ Country of origin;

○ Commodity Harmonized Tariff Schedule of the United States (HTSUS) number;

○ Booking party; and

○ Other identification information regarding the party to the transaction.

• Crewmember/Passenger Information

○ Carrier Information (including vessel flag and vessel name, date of arrival, and port of arrival (CBP Form 5129));

○ Person on arriving conveyance who is in charge;

○ Names of all crew members and passengers;

○ Date of birth of each crew member and passenger;

○ Commercial driver license (CDL)/driver license number for each crew member;

○ CDL state or province of issuance for each crew member;

○ CDL country of issuance for each crew member;

○ Travel document number for each crew member and passenger;

○ Travel document country of issuance for each crew member and passenger;

○ Travel document for state/province of issuance for each crew member and passenger;

○ Travel document type for each crew member and passenger;

○ Address for each crew member and passenger;

○ Gender of each crew member and passenger;

○ Nationality/citizenship of each crew member and passenger; and

○ HAZMAT endorsement for each crew member.

• Federal Employee Information (including CBP and PGA employees)

○ CBP employee names;

○ CBP employee hash identification, SSN, or other employee identification number; and

○ Federal Government employee names, work addresses, work phone numbers, and ACE identification if already an ACE–ITDS user.

• Manifest Information

○ *Bill of Lading (B/L) or Air Waybill (AWB) Number*—The number assigned on the manifest by the international carrier delivering the goods to the United States.

○ *Immediate Transportation Number*—The Immediate Transportation number obtained from the CBP Form 7512, the AWB number from the Transit Air Cargo Manifest (TACM), or Automated Manifest System (AMS) master in-bond (MIB) movement number.

○ *Immediate Transportation Date*—The month, day, and year obtained from the CBP Form 7512, TACM, or AMS MIB record. Note that Immediate Transportation date cannot be prior to import date.

○ *Missing Documents*—Codes that indicate which documents are not available at the time of filing the entry summary.

○ *Foreign Port of Lading*—The five digit numeric code listed in the "Schedule K" (Classification of Foreign Ports by Geographic Trade Area and Country) for the foreign port at which the merchandise was actually laden on the vessel that carried the merchandise to the United States.[2]

○ *U.S. Port of Unlading*—The U.S. port code where the merchandise was unladen (or, delivered) from the importing vessel, aircraft, or train.

○ *Location of Goods/General Order (GO) Number*—Also known as a "container stuffing location," the pier or site where the goods are available for examination. For air shipments, this is the flight number.

• CBP Generated Records

○ *Entry Number*—The entry number is a CBP-assigned number that is unique to each Entry Summary (CBP Form 7501).

○ *Entry Type*—Entry type denotes which type of entry summary is being filed (*i.e.*, consumption, information, and warehouse). The sub-entry type further defines the specific processing type within the entry category (*i.e.*, free and dutiable, quota/visa, anti-dumping/countervailing duty, and appraisement).[3]

○ *Summary Date*—The month, day, and year on which the entry summary is filed with CBP. The record copy of the entry summary will be time stamped by the filer at the time of presentation of the entry summary. Use of this field is optional for ABI statement entries. The time stamp will serve as the entry summary date. The filer will record the proper team number designation in the upper right portion of the form above this block (three-character team number code).[4]

○ *Port Code*—The port is where the merchandise was entered under an entry or released under an immediate delivery permit. CBP relies on the U.S.

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[2] The "Schedule K" may be retrieved at: *http://www.iwr.usace.army.mil/ndc/wcsc/scheduleK/schedulek.htm.*

[3] Automated Broker Interface (ABI) processing requires an ABI status indicator. This indicator must be recorded in the entry type code block. It is to be shown for those entry summaries with ABI status only.

[4] For ABI entry summaries, the team number is supplied by CBP's automated system in the summary processing output message.

port codes from Schedule D, Customs District and Port Codes, listed in Annex C of the Harmonized Tariff Schedule (HTS).

○ *Entry Date*—The month, day, and year on which the goods are released, except for immediate delivery, quota goods, or when the filer requests another date prior to release.[5] It is the responsibility of the filer to ensure that the entry date shown for entry/entry summaries is the date of presentation (*i.e.,* the time stamp date). The entry date for a warehouse withdrawal is the date of withdrawal.

○ *Manufacturer ID*—This code identifies the manufacture/shipper of the merchandise by a CBP-constructed code. The manufacturer/shipper identification code is required for all entry summaries and entry/entry summaries, including informal entries, filed on the CBP Form 7501.

○ *Notes*—Notations and results of examinations and document review for cleared merchandise.

○ Trade violation statistics.

○ Protest and appeal decision case information.

- Surety and Bond Information

○ *Surety Information*—Full legal name of entity, address.

○ *Surety Number*—A three-digit numeric code that identifies the surety company on the Customs Bond. This code can be found in block 7 of the CBP Form 301, or is available through CBP's automated system to ABI filers, via the importer bond query transaction.

○ *Bond Type*—A three-digit numeric code identifying the following type of bond: U.S. Government or entry types not requiring a bond; Continuous; or Single Transaction.

○ *Additional Bond Information*—All authorized users of bond, bond expiration date.

- Merchandise-Specific Information

○ *Line Number*—A commodity from one country, covered by a line which includes a net quantity, entered value, HTS number, charges, rate of duty and tax.

○ *Description of Merchandise*—A description of the articles in sufficient detail (*i.e.,* gross weight, manifest quantity, net quantity in HTS units, U.S. dollar value, all other charges, costs, and expenses incurred while bringing the merchandise from alongside the carrier at the port of exportation in the country of exportation and placing it alongside the carrier at the first U.S. port of entry).

○ *License Numbers*—For merchandise subject to agriculture licensing.

○ *Country of Origin*—The country of origin is the country of manufacture, production, or growth of any article. When merchandise is invoiced in or exported from a country other than that in which it originated, the actual country of origin shall be specified rather than the country of invoice or exportation.

○ *Import Date*—The month, day, and year on which the importing vessel transporting the merchandise from the foreign country arrived within the limits of the U.S. port with the intent to unlade.

○ *Exporting Country*—The country of which the merchandise was last part of the commerce and from which the merchandise was shipped to the United States.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

19 U.S.C. secs. 66, 1431, 1448, 1481, 1484, 1505, 1514, 1624, and 2071 note; 26 U.S.C. 6109(d); 31 U.S.C. 7701(c); sec. 203 of the Security and Accountability for Every (SAFE) Port Act of 2006 and sec. 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002; title 19 of the Code of Federal Regulations, including 19 CFR 24.5, 149.3, 101.9, and 103.31(e).

PURPOSE(S):

This system of records allows DHS/CBP to collect and maintain records on all commercial goods imported into the United States, along with carrier, broker, importer, and other ACE–ITDS Portal user account and manifest information. The purpose of this system of records is to track, control, and process all commercial goods imported into the United States. This facilitates the flow of legitimate shipments, and assists DHS/CBP in securing U.S. borders and targeting illicit goods. The IIS covers two principle information technology systems: The Automated Commercial System (ACS) and ACE–ITDS. The Automated Commercial System employs multiple modules to receive data transmissions from a variety of parties involved in international commercial transactions and provides DHS/CBP with the capability to track both the transport transactions and the financial transactions associated with the movement of merchandise through international commerce. The ACE–ITDS modernizes and enhances trade processing with features that will consolidate and automate border processing. The ACE–ITDS serves three sets of core stakeholders: The internal DHS/CBP users, PGAs, and the trade community in the movement of merchandise through international commerce.

DHS/CBP maintains a replica of some or all of the data in the operating system on other unclassified and classified systems and networks to allow for analysis and vetting consistent with the above stated purposes and this published notice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the United States Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any Component thereof;

2. Any employee or former employee of DHS in his or her official capacity;

3. Any employee or former employee of DHS in his or her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems

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[5] 19 CFR 141.68.

or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty when DHS determines that the information would assist in the enforcement of civil or criminal laws.

H. To a federal, state, or local agency, or other appropriate entity or individual, or through established liaison channels to selected foreign governments, in order to provide intelligence, counterintelligence, or other information for the purposes of intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

I. To the Department of Commerce, United States Census Bureau for statistical analysis of foreign trade data.

J. To a federal agency, pursuant to an International Trade Data System Memorandum of Understanding, consistent with the receiving agency's legal authority to collect information pertaining to and/or regulate transactions in international trade.

K. To a federal, state, local, tribal, territorial, foreign, or international agency, maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant or necessary to the requesting agency's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

L. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

M. To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

N. To the Department of Justice, Offices of the United States Attorneys or a consumer reporting agency as defined by the Fair Credit Reporting Act, address or physical location information concerning the debtor, for further collection action on any delinquent debt when circumstances warrant;

O. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations when DHS is aware of a need to use relevant data for purposes of testing new technology and systems designed to enhance national security or identify other violations of law;

P. To a former employee of DHS, in accordance with applicable regulations, for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes when the Department requires information or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

Q. To an organization or individual in either the public or private sector, either foreign or domestic, when there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property;

R. To paid subscribers, in accordance with applicable regulations, for the purpose of providing access to manifest information as set forth in 19 U.S.C. 1431;

S. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

CBP may disclose, pursuant to 5 U.S.C. 552a(b)(12), to consumer reporting agencies in accordance with the provision of 15 U.S.C. 1681, *et seq.* or the Federal Claims Collection Act of 1966 as amended (31 U.S.C. 3701, *et seq.*). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government, typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these part of their credit records.

Disclosure of records is limited to the individual's name, address, EIN/SSN, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency or program under which the claim arose. The disclosure will be made only after the procedural requirements of 31 U.S.C. 3711(e) have been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

DHS/CBP stores records in this system, as well as on other unclassified and classified systems and networks, electronically, or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

DHS/CBP retrieves records by file identification codes, name, or other personal identifier.

SAFEGUARDS:

DHS/CBP safeguards records in this system in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS/CBP imposes strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. The systems maintain a real-time auditing function of individuals who access them. Additional safeguards may vary by Component and program.

RETENTION AND DISPOSAL:

The Importer Security Filing form is retained for fifteen years from date of submission unless it becomes linked to law enforcement action. All other import records contained within IIS are maintained for a period of six years from the date of entry.

Some records are retained online in a system database, while others may be retained in hard copy in ports of entry, as appropriate. Personally identifiable information collected in IIS as part of the regulation of incoming cargo will be retained in accordance with the U.S. Customs Records Schedules approved by the National Archive and Records Administration for the forms on which the data is submitted. This means that cargo, crew, driver, and passenger information collected from a manifest presented in connection with the arrival of a vessel, vehicle, or aircraft will be retained for six years.

Information collected in connection with the submission of a Postal Declaration for a mail importation will be retained for a maximum of six years and three months (as set forth pursuant to NARA Authority N1–36–86–1, U.S. Customs Records Schedule, Schedule 9 Entry Processing, Items 4 and 5).

Records replicated on other DHS or CBP unclassified and classified systems and networks will follow the same retention schedule.

SYSTEM MANAGER AND ADDRESS:

Director, Integrated Logistic Support, Cargo Systems Program Office, Office of Information Technology, U.S. Customs and Border Protection, 1801 North Beauregard Street, Alexandria, Virginia 22311.

NOTIFICATION PROCEDURE:

ACE–ITDS portal users may log in to ACE–ITDS to change their profile information and make permissible amendments or corrections to their records. Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the DHS/CBP Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under "Contacts." If an individual believes more than one Component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief FOIA Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

An individual seeking records about him or herself from this system of records or any other Departmental system of records, must submit a request that conforms with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. Although no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief FOIA Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which Component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS Component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his or her agreement for you to access his or her records.

Without the above information, the Component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

In processing Privacy Act requests for related to information in this system, CBP will review the records in the operational system, and coordinate review of records that were replicated on other unclassified and classified systems and networks.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

DHS/CBP collects information from authorized DHS/CBP or other Federal agency forms, related documents, or electronic submissions from individuals and/or companies incidental to the conduct of foreign trade and required to administer the transportation and trade laws and regulations of the United States.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

DHS/CBP will not assert any exemptions with regard to information provided by or on behalf of an individual, when requested by or on behalf of the data subject. However, this data may be shared with law enforcement and/or intelligence agencies pursuant to the routine uses identified in the IIS SORN. The Privacy Act requires DHS to maintain an accounting of such disclosures made pursuant to all routine uses. Disclosing the fact that a law enforcement and/or intelligence agency has sought particular records may affect ongoing law enforcement activity. As such, DHS will claim exemption pursuant to 5 U.S.C. 552a(j)(2) from secs. (c)(3), (e)(8), and (g)(1) of the Privacy Act, and pursuant to 5 U.S.C. 552a(k)(2) from sec. (c)(3) of the Privacy Act, from providing an individual the accounting of disclosures, as necessary and appropriate to protect this information.

Dated: July 20, 2016.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2016–17596 Filed 7–25–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2015–0037]

Privacy Act of 1974; Department of Homeland Security/ALL–014 Personnel Emergency Contact Information System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to rename, update, and reissue a current Department of Homeland Security system of records notice previously titled, "Department of Homeland Security/ALL–014 Emergency Personnel Location Records" with a new Department of Homeland Security system of records notice titled, "Department of Homeland Security/ALL–014 Personnel Emergency Contact Information System of Records." This system of records allows the Department of Homeland Security (DHS) to collect and maintain necessary records concerning DHS personnel (including Federal employees and contractors) for workforce accountability; federal employees, contractors, or other individuals who participate in or who respond to all-hazards emergencies including technical, manmade, or natural disasters, or who participate in emergency response training exercises;

and individuals identified as emergency points of contact. As a result of a biennial review of this system, DHS is updating this system of records notice to include changes within the: system name, categories of individuals, categories of records, authority for maintenance, purpose, and retention and disposal. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This updated system will be included in the Department's inventory of record systems.

DATES: Submit comments on or before August 25, 2016.

ADDRESSES: You may submit comments, identified by docket number DHS–2015–0037 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. This updated system will be effective August 25, 2016.
- *Fax:* 202–343–4010.
- *Mail:* Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket, to read background documents, or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Karen L. Neuman, 202–343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a *as amended,* the Department of Homeland Security (DHS) proposes to rename, update, and reissue a current DHS system of records notice titled, "DHS/ALL–014 Personnel Emergency Contact Information System of Records." This system of records allows DHS to collect and maintain necessary records concerning current and former DHS personnel (including Federal employees and contractors) for workforce accountability; Federal employees, contractors or other individuals who participate in or who respond to all-hazards emergencies including technical, manmade, or natural disasters, or who participate in emergency response training exercises; and individuals identified as emergency points of contact. DHS collects information of family members, next of kin, or other designated emergency contact persons for use in the event of an emergency.

As a result of a biennial review of this system, DHS is updating this system of records notice to include changes within the: (1) System name, (2) categories of individuals, (3) categories of records, (4) authority for maintenance, (5) purpose, and (6) retention and disposal. The system is renamed Personnel Emergency Contact Information System of Records to clarify that this system of records stores contact information about all current and former DHS personnel and individuals they have identified as emergency contacts or next of kin. The updated categories of individuals describes the four types of individuals maintained within this system of records: current and former DHS personnel, including Federal employees and contractors; current and former Federal employees, contractors, or other individuals who participate in or conduct exercises; current and former Federal employees, contractors, or other individuals who respond to all hazards emergencies including technical, manmade, or natural disasters; and individuals that current or former DHS personnel have identified as emergency points of contact, including family members and next of kin. The updated categories of records have been expanded to include information collected during a response to all-hazards emergencies and deployment of personnel during such responses. The legal authorities have been updated to include the appropriate sections of the Robert T. Stafford Act and the Post-Katrina Emergency Management Reform Act relevant to the deployment of individuals for emergency response. The purpose of the system has been broadened to increase transparency and clarity on why the information is being collected and how it is used. In addition to contacting individuals and emergency contacts, the information is also used to facilitate the response and deployment of DHS and non-DHS personnel to all-hazards emergencies. Lastly, the retention and disposal have been updated to address the retention of deployment-related records.

In the course of responding to, or planning for, all-hazards emergencies, DHS may contact, locate, and deploy current and former DHS personnel; implement the Continuity of Operations (COOP) Plan; and participate in exercises. This system of records encompasses the collection, storage, and use of information associated with such activities and for all individuals that participate in those activities. Additionally, for emergency notification purposes, DHS may need to contact the identified emergency contacts of the individual.

Consistent with DHS's information sharing mission, information stored in the DHS/ALL–014 Personnel Emergency Contact Information System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate Federal, State, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice. This updated system will be included in the Department's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is a description of the DHS/ALL–014 Personnel Emergency Contact Information System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this revised system of records to the Office of Management and Budget and to Congress.

System of Records:

Department of Homeland Security (DHS)/ALL–014

SYSTEM NAME:

DHS/ALL–014 Department of Homeland Security Personnel Emergency Contact Information.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at Headquarters locations and in Component offices of DHS, in both Washington, DC and field locations. Personnel emergency contact information is typically maintained locally by individual DHS offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals in this system include:

- Current and former DHS personnel, including Federal employees and contractors;
- Current and former Federal employees, contractors, or other individuals who participate in or conduct exercises;
- Current and former federal employees, contractors, or other individuals who respond to all hazards emergencies including technical, manmade, or natural disasters; and
- Individuals that current or former DHS personnel have identified as emergency points of contact, including family members and next of kin.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records related to current and former DHS personnel, including Federal employees and contractors, and individuals identified as emergency points of contact may include:

- Name;
- Work contact information (address, email address, phone, fax);
- Personal contact information (address, email address, phone numbers, pager number, and pin number);
- Company/organization name;
- Supervisor name and contact information; and
- Relationship to current or former DHS personnel.

Categories of records related to Federal employees, contractors or other individuals who participate in or who respond to all-hazards emergencies including technical, manmade or natural disasters, or who participate in emergency response training exercises may include:

- Name;
- Social Security number;
- Date of birth;
- Identifiers related to deployment;
- Height, weight, and other personal characteristics, if applicable;
- Work contact information (address, email address, phone, fax);
- Personal contact information (address, email address, phone numbers, pager number, and pin number);
- Deployment contact information (lodging address and phone number) while deployed;
- Company/organization name and organization code;
- Job information (position title, start date, duty status, pay status, and employment type);
- Supervisor name and contact information;
- Deployment point of contact name and contact information;
- Approvals, authorizations, certifications, and proficiency levels for training and deployment;
- Information on deployment position (program area, position type);
- Status of credentials for access to regulated facilities;
- Status of Government Credit Card (yes or no);
- Clearance and access level;
- Deployment information (duty station, dates, and lodging);
- Skills inventory, qualifications, specialties, and proficiency levels;
- Volunteered medical information;
- Emergency response group/non-emergency response group status; and
- Emergency recall rosters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Homeland Security Act of 2002, 6 U.S.C. 313, 314, 317, 320, and 711; Robert T. Stafford Disaster Relief and Emergency Assistance Act, *as amended,* 42 U.S.C. 5144, 5149, 5170b, 5192, and 5197.

PURPOSE(S):

The purpose of this system is for DHS workforce accountability, to support DHS all-hazards emergency response deployments and exercises, and to contact designated persons in the event of an emergency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity when the DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;
2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and
3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To a Federal, State, tribal, or local agency, if the information is relevant and necessary, for the requesting agency's approval on the issuance of a security clearance or for the purpose of providing support in an all hazards emergencies including technical, manmade, or natural disasters.

I. To Federal, State, tribal, local, international, or foreign governmental agencies or executive offices, relief agencies, and non-governmental organizations, when disclosure is appropriate for performance of the official duties required in response to all-hazards including technical, manmade, or natural disasters.

J. To identified emergency contacts of:

1. Current and former DHS personnel, including Federal employees and contractors;

2. Current and former Federal employees, contractors, or other individuals who participate in or conduct exercises; or

3. Current and former Federal employees, contractors, or other individuals who respond to all hazards emergencies including technical, manmade, or natural disasters.

K. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

DHS stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, and digital media.

RETRIEVABILITY:

DHS may retrieve records by an individual's name, location, or other personal identifier.

SAFEGUARDS:

DHS safeguards records in this system in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records relating to current and former DHS employees, and individuals designated as emergency points of contact, will be destroyed within one year after separation or transfer of the employee, in accordance with National Archives and Records Administration (NARA) General Records Schedule 1, Item 18. Federal Emergency Management Agency Records Schedule EOM–16, which will cover records related to deployment activities, will be submitted by FEMA to NARA for review and approval. FEMA proposes that records related to deployment activities be considered temporary records with a cutoff at the end of each calendar year and are destroyed 50 years after the cutoff date.

SYSTEM MANAGER AND ADDRESS:

The System Manager is the Director, Office of Operations Coordination (OPS), Department of Homeland Security, Washington, DC 20528.

NOTIFICATION PROCEDURE:

Individuals seeking notification of, and access to, any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters' or component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia-contact-information.* If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his or her agreement for you to access his or her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from DHS personnel (including Federal employees and contractors), individuals who participate in or conduct exercises or who respond to all hazards emergencies including technical, manmade, or natural disasters; and other government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: July 20, 2016.

Jonathan Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2016–17597 Filed 7–25–16; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0023]

Agency Information Collection Activities: Application To Register Permanent Residence or Adjust Status, Form I–485, and Adjustment of Status Under Section 245(i), Supplement A to Form I–485; Revision of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on March 31, 2016, at 81 FR 18636, allowing for a 60-day public comment period. USCIS received comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 25, 2016. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0023.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2009–0020 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status and Adjustment of Status Under Section 245(i).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–485 and Supplement A to Form I–485; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected is used to determine eligibility to adjust status under section 245 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Form I–485—574,000 respondents responding at an estimated 6 hours 15 minutes per response.

Form I–485A—36,000 respondents responding at an estimated 1 hour and 15 minutes per response.

There are 460,991 respondents requiring Biometric Processing at an estimated 1 hour and 10 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 4,171,860 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $196,882,000.

Dated: July 21, 2016.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–17634 Filed 7–25–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2016–N124; FXFR1334088TWG0W4–123–FF08EACT00]

Trinity River Adaptive Management Working Group; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a joint meeting between the Trinity River Adaptive Management Working Group (TAMWG) and the Trinity Management Council (TMC). The TAMWG is a Federal advisory committee that affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight.

DATES: *Public meeting:* TAMWG will meet from 8:30 a.m. to 4 p.m. Pacific

Time on Thursday, August 25, 2016.

Deadlines: For deadlines on submitting written material, please see "Public Input" under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: This will be a float trip along the Trinity River. The meeting/float will begin at Lorenz Gulch Parking lot.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polos, by mail at U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; by telephone at 707–822–7201; or by email at *joe_polos@fws.gov,* or Elizabeth W. Hadley, Redding Electric Utility, by mail at 777 Cypress Avenue, Redding, CA 96001; by telephone at 530–339–7308 or by email at *ehadley@reupower.com.* Individuals with a disability may request an accommodation by sending an email to either point of contact.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Trinity River Adaptive Management Working Group will hold a meeting.

Background

The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the TMC. The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight.

Meeting Agenda

- Introduction of new TAMWG and TMC members;
- Float trip to view river and restoration sites;
- TAMWG and TMC coordination/communication; and
- Review of 2016 flow releases.

The final agenda will be posted on the Internet at *http://www.fws.gov/arcata.*

Public Input

If you wish to	You must contact Elizabeth Hadley (**FOR FURTHER INFORMATION CONTACT**) no later than
Submit written information or questions for the TAMWG to consider during the meeting.	August 17, 2016.
To attend this meeting you must make reservations with Elizabeth Hadley (TAMWG Chair) or Joe Polos (TAMWG DFO) so appropriate accommodations can be made..	August 17, 2016.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the TAMWG to consider during the meeting. Written statements must be received by the date listed in "Public Input," so that the information may be available to the TAMWG for their consideration prior to this meeting. Written statements must be supplied to Elizabeth Hadley in one of the following formats: One hard copy with original signature, one electronic copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, PowerPoint, or rich text file).

Registered speakers who wish to expand on their oral statements, or those who wished to speak but could not be accommodated on the agenda, may submit written statements to Elizabeth Hadley up to 7 days after the meeting.

Meeting Minutes

Summary minutes of the meeting will be maintained by Elizabeth Hadley (see **FOR FURTHER INFORMATION CONTACT**). The minutes will be available for public inspection within 14 days after the meeting, and will be posted on the TAMWG Web site at *http://www.fws.gov/arcata.*

Dated: July 20, 2016.

Joseph C. Polos,

Supervisory Fish Biologist, Arcata Fish and Wildlife Office, Arcata, California.

[FR Doc. 2016–17614 Filed 7–25–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2016–N107; FXES11130200000–167–FF02ENEH00]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Both the Act and the National Environmental Policy Act require that we invite public comment before issuing these permits.

DATES: To ensure consideration, written comments must be received on or before August 25, 2016.

ADDRESSES: Susan Jacobsen, Chief, Division of Classification and Restoration, by U.S. mail at Division of Classification and Restoration, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103; or by telephone at 505–248–6920. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Division of Classification and Restoration, by U.S. mail at P.O. Box 1306, Albuquerque, NM 87103; or by telephone at 505–248–6920.

SUPPLEMENTARY INFORMATION: The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies and the public to comment on the following applications. Please refer to the appropriate permit number (*e.g.,* Permit No. TE–123456) when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE – 96189B

Applicant: Adam P. Terry, Diboll, Texas.

Applicant requests a new permit for research and recovery purposes to monitor, trap, band, and translocate red-cockaded woodpeckers (*Picoides borealis*) in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, and Texas.

Permit TE – 819549

Applicant: Hualapai Tribe, Peach Springs, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys and nest monitoring for southwestern willow flycatcher (*Empidonax traillii extimus*), presence/absence surveys and capture of black-footed ferrets (*Mustela nigripes*), and captive propagation of razorback sucker (*Xyrauchen texanus*), and humpback chub (*Gila cypha*) within Arizona.

Permit TE–95112B

Applicant: Blanchard Environmental Consulting, Durango, Colorado.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona, Colorado, New Mexico, and Utah.

Permit TE–43746A

Applicant: Northern Arizona University, Flagstaff, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within Texas.

Permit TE – 95116B

Applicant: University of Arizona, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) within Arizona.

Permit TE–99156B

Applicant: Michael Balistreri, Albuquerque, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within New Mexico.

Permit TE–094375

Applicant: Azimuth Forestry Services, Inc., Shelbyville, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys and collect Texas golden gladecress (*Leavenworthia texana*) from Federal lands within Texas.

Permit TE–144755

Applicant: Reagan Smith Energy Solutions, Inc., Oklahoma City, Oklahoma.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for American burying beetle (*Nicrophorus americanus*) within Ohio.

Permit TE–94245B

Applicant: Jarrod Powers, Stillwater, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of American burying beetle (*Nicrophorus americanus*) within Oklahoma and Texas.

Permit TE–97234B

Applicant: Aaron Dugas, Houston, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of American burying beetle (*Nicrophorus americanus*) within Arkansas, Kansas, Oklahoma, and Texas.

Permit TE–98651B

Applicant: Edgardo Delgado, Jenks, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of American burying beetle (*Nicrophorus americanus*) within Oklahoma.

Permit TE–99159B

Applicant: Eli Ellis, Oklahoma City, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of American burying beetle (*Nicrophorus americanus*) within Oklahoma.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: July 20, 2016.

Benjamin N. Tuggle,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2016–17556 Filed 7–25–16; 8:45 am]

BILLING CODE 4333–15–P

GEOLOGICAL SURVEY

[GX16EF00PMEXP00]

Announcement of USGS National Geospatial Program (NGP) 3D Elevation Program (3DEP) FY16 Public Webinars in Preparation for the Upcoming Release of the USGS Broad Agency Announcement for 3D Elevation

ACTION: Notice of Webinar(s).

SUMMARY: The 3D Elevation Program (3DEP) initiative is being developed to respond to needs for high-quality topographic data and for a wide range of other three-dimensional representations of the Nation's natural and constructed features. The primary goal of 3DEP is to systematically collect enhanced elevation data in the form of high-quality light detection and ranging (lidar) data over the conterminous United States, Hawaii, and the U.S.

territories, as well as interferometric synthetic aperture radar (ifsar) data over Alaska. The 3DEP initiative is based on the results of the National Enhanced Elevation Assessment (NEEA), which indicated an optimal benefit to cost ratio for Quality Level 2 (QL2) data collected over 8-years to complete national coverage. The implementation model for 3DEP is based on multi-agency partnership funding for acquisition, with the USGS acting in a lead program management role to facilitate planning and acquisition for the broader community, through the use of government contracts and partnership agreements. The annual Broad Agency Announcement (BAA) is a competitive solicitation issued to facilitate the collection of lidar and derived elevation data for the 3D Elevation Program (3DEP). Federal agencies, state and local governments, tribes, academic institutions and the private sector are eligible to submit proposals. The 3DEP public webinars will introduce this opportunity to the broadest stakeholder community possible and provide a summary of the BAA application procedures. Advanced Registration is required. National Webinars will be recorded and made available for viewing.

DATES: USGS Broad Agency Announcement (BAA) for 3D Elevation Program (3DEP) FY16 National Webinars—Notice of Public Acquisition Opportunity: August 11, 2016 3:00–4:30 ET, August 15, 2016 1:00–2:30 ET. Virtual meeting information posted on *https://cms.geoplatform.gov/elevation/3DEP/PublicMeetings.*

3DEP and BAA Presentations in your state: Information on upcoming 3DEP and BAA presentations in your state are posted on *https://cms.geoplatform.gov/elevation/3DEP/PublicMeetings.*

FOR FURTHER INFORMATION CONTACT: Diane Eldridge, 703–648–4521, *deldridge@usgs.gov,* 3D Elevation Program, *gs_baa@usgs.gov.*

SUPPLEMENTARY INFORMATION: The BAA is issued under the provisions of FAR Part 35. Proposals selected for eventual award are considered to be the result of full and open competition and in full compliance with the provision of Public Law 98–369, "The Competition in Contracting Act of 1984" and subsequent amendments. For additional information on the 3DEP program: *http://nationalmap.gov/3DEP/index.html.*

Dated: July 20, 2016.

Julia Fields,

Deputy Director, National Geospatial Program.

[FR Doc. 2016–17539 Filed 7–25–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A501010.999900]

Renewal of Agency Information Collection for Navajo Partitioned Lands Grazing Permits

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) has submitted to the Office of Management and Budget (OMB) a request for renewal of the collection of information for Navajo Partitioned Lands Grazing Permits authorized by OMB Control Number 1076–0162. This information collection expires July 31, 2016.

DATES: Interested persons are invited to submit comments on or before August 25, 2016.

ADDRESSES: Please submit your comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov.* Also please send a copy of your comments to Derrith Watchman-Moore, Office of Trust Services, Branch of Natural Resources, P.O. Box 1060, Gallup, New Mexico 87105; telephone: (505) 863–8221; email: *derrith.watchman-moore@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Derrith Watchman-Moore, Office of Trust Services, Branch of Natural Resources, P.O. Box 1060, Gallup, New Mexico 87105; telephone: (505) 863–8221; email: *derrith.watchman-moore@bia.gov.* You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is authorized under 25 CFR 161, which implements the Navajo-Hopi Indian Relocation Amendments Act of 1980, 94 Stat. 929, codified as 25 U.S.C. 640d–640d–31, and the Federal court decisions of *Healing* v. *Jones,* 174 F. Supp.211 (D Ariz. 1959) (Healing I), *Healing* v. *Jones,* 210 F. Supp. 126 (D. Ariz. 1962), aff'd 363 U.S. 758 (1963) (Healing II), *Hopi Tribe* v. *Watt,* 530 F. Supp. 1217 (D. Ariz. 1982), and *Hopi Tribe* v. *Watt,* 719 F.2d 314(9th Cir. 1983). Another law and ruling affecting grazing include Public Law 103–177, the American Indian Agricultural Resource Management Act, as amended and codified as 25 U.S.C. 3701 *et seq.,* authorizes the Secretary of the Interior, in participating with the beneficial owner of the land, to manage Indian agricultural lands in a manner consistent with trust responsivities and with identified Tribal goals and priorities for conservation, multiple use, and sustained yield.

This information collection allows BIA to receive the information necessary to determine whether an applicant to obtain, modify, or assign a grazing permit on Navajo Partitioned Lands is eligible and complies with all applicable grazing permit requirements. BIA, in coordination with the Navajo Nation, will continue to collect grazing permit information up to and beyond the initial reissuing of the grazing permits, likely within a 1–3 year time period from the date of publication of this notice. The data is maintained by BIA's Navajo Partitioned Land office. The burden hours for this continued collection of information are reflected in the Estimated Total Annual Hour Burden in this notice.

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0162.

Title: Navajo Partitioned Lands Grazing Permits, 25 CFR 161.

Brief Description of Collection: Submission of information is required for Navajo Nation Tribal members wanting to obtain, modify, or assign a grazing permit on Navajo partitioned lands, and the BIA will seek concurrence from the Navajo Nation to issue grazing permits.

Type of Review: Revision of a currently approved collection.

Respondents: Navajo Nation Tribal members and the Navajo Nation.

Number of Respondents: 700.

Number of Responses: 3,121.

Frequency of Response: Annually.

Obligation to Respond: Responses are required to obtain or maintain a benefit.

Estimated Time per Response: Varies from quarter of an hour to one hour, with an average of less than one hour per response.

Estimated Total Annual Hour Burden: 2,123.

Estimated Total Annual Non-Hour Dollar Cost: $0.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2016–17546 Filed 7–25–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X L1109AF LLUTY0100000 L16100000.DQ0000 LXSS030J0000 24 1A]

Notice of Availability of the Moab Master Leasing Plan and Proposed Resource Management Plan Amendments/Final Environmental Impact Statement for the Moab and Monticello Field Offices, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) has prepared the Moab Master Leasing Plan (MLP) and Proposed Resource Management Plan (RMP) Amendments/Final Environmental Impact Statement (EIS) for the Moab and Monticello Field Offices in the Canyon Country District, Utah. The MLP/Proposed RMP Amendments/Final EIS (MLP/FEIS) proposes amending the RMPs for the Moab and Monticello Field Offices and by this notice the BLM is announcing its availability.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's MLP/FEIS. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the Moab MLP and Proposed RMP Amendments/Final EIS have been sent to affected Federal, State, and local government agencies, affected tribal governments, and to other stakeholders. Copies of the MLP/Proposed RMP Amendments/Final EIS are available for public inspection at the following locations:

- Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101
- Bureau of Land Management, Moab Field Office, 82 East Dogwood, Moab, Utah 84532
- Bureau of Land Management, Monticello Field Office, 365 North Main, Monticello, Utah 84535

Interested persons may also review the MLP/Proposed RMP Amendments/Final EIS and accompanying background documents on the internet at: *http://www.blm.gov/21jd.* All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), Attention: Protest Coordinator, P.O. Box 71383, Washington, DC 20024–1383.

Overnight Delivery: BLM Director (210), Attention: Protest Coordinator, 20 M Street SE., Room 2134LM, Washington, DC 20003

FOR FURTHER INFORMATION CONTACT: Brent Northrup, Project Manager, BLM Moab Field Office, telephone 435–259–2151; 82 East Dogwood, Moab, Utah 84532; email *Brent_Northrup@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The MLP/Proposed RMP Amendments/Final EIS would change the management direction for the leasing of oil, gas and potash in portions of the Moab and Monticello plan areas. The MLP planning area encompasses 785,000 acres of public lands in southeast Utah in Grand and San Juan Counties. The planning area is located south of Interstate 70 and adjoins the town of Moab and Arches National Park. The western boundary is the Green River and the northeastern boundary of Canyonlands National Park. To the south of Moab, the planning area includes the Indian Creek/Lockhart Basin/Hatch Point area between Canyonlands National Park and Highway 191. Land uses and values within the planning area include substantial potash resources, proven oil and gas resources, world class scenery, and both developed and back-country recreational opportunities. In addition, the planning area is immediately adjacent to Arches and Canyonlands National Parks. This unique combination of values means the planning area contributes to the local economy both through tourism and mineral extraction.

The BLM has prepared a MLP/Proposed RMP Amendments/Final EIS in accordance with the BLM Washington Office Instruction Memorandum (IM No. 2010–117: Oil and Gas Leasing Reform—Land Use Planning and Lease Parcel Reviews (May 17, 2010)) and the BLM Handbook H–1624–1: Planning for Fluid Mineral Resources, Chapter V, Master Leasing Plans (January 28, 2013). As the Handbook explains, an MLP is a plan that includes analysis of a distinct geographic area that takes a closely-focused look at RMP decisions pertaining to leasing and post-leasing development of the area. Although the IM and the Handbook pertain to oil and gas leasing decisions, the BLM determined that the MLP concepts are also applicable to potash leasing decisions due to the nature of potash exploration and development in the planning area. Therefore, the MLP process provides additional planning and analysis for areas prior to new leasing of oil and gas and potash. The MLP/Proposed RMP Amendments/Final EIS analyzes likely mineral development scenarios and land use plan alternatives with varying mitigation levels for leasing.

The MLP/Proposed RMP Amendments/Final EIS includes a range of management alternatives designed to address management challenges and issues raised during scoping concerning mineral leasing decisions in the area. The four alternatives are:

(1) Alternative A is the No Action alternative and represents the continuation of existing mineral leasing management (oil, gas, and potash). Alternative A allows for oil, gas, and potash leasing and development to occur on the same tracts of land where it is consistent with current leasing decisions in the RMPs.

(2) Alternative B provides for mineral leasing and development outside of areas that are protected for high scenic quality (including public lands visible from Arches and Canyonlands National Parks), high-use recreation areas, and other sensitive resources with stipulations that minimize surface disturbance and associated potential resource impacts. Mineral leasing decisions are divided into two options specified as Alternative B1 and Alternative B2. In Alternative B1, surface impacts would be minimized by separating new leasing of the two commodities (oil/gas and potash), limiting the density of mineral development, and locating potash processing facilities in areas identified with the least amount of sensitive resources. Potash leasing would involve a phased approach and would be prioritized within identified areas. Alternative B2 provides for only oil and gas leasing; no new potash leasing would occur. Alternative B2 would also minimize surface impacts by limiting the density of oil and gas development.

(3) Alternative C provides for only oil and gas leasing; no potash leasing would occur. This alternative affords the greatest protection to areas with high scenic quality, recreational uses, and special designations, the BLM-managed lands adjacent to Arches and Canyonlands National Parks, and other sensitive resources.

(4) Alternative D is the BLM's proposed plan and provides for both oil and gas leasing and potash leasing. Mineral development would be precluded in many areas with high scenic quality, in some high use recreation areas, specifically designated areas, and in other areas with sensitive resources. Outside of these areas, surface impacts would be minimized by separating leasing of the two commodities (oil/gas and potash), locating potash processing facilities in areas with the least amount of sensitive resources, and limiting the density of mineral development. Potash leasing would involve a phased approach and would be prioritized within identified areas. The proposed plan would provide operational flexibility for mineral leasing and development through some specific exceptions and would close the BLM-managed lands adjacent to Arches and Canyonlands National Parks to mineral leasing and development. In the proposed plan, a controlled surface use stipulation requiring compensatory mitigation would be applied to sensitive resources where onsite mitigation alone may not be sufficient to adequately mitigate impacts. Best Management Practices (BMPs) have been developed that include components of the draft compensatory mitigation policy such as the priority for mitigating impacts, types of mitigation, long term durability, and monitoring. The BMPs also identify Utah's Watershed Restoration Initiative projects as potential locations for compensatory mitigation outside the area of impact. Utah's Watershed Restoration Initiative is a partnership-driven effort which includes State and Federal agencies with a mission to conserve, restore, and manage ecosystems in priority areas across Utah. Comments on the MLP and Draft RMP Amendments/Draft EIS (MLP/DEIS) received from the public and internal BLM review were considered and incorporated, as appropriate, into the proposed plan amendments and Final EIS. Public comments resulted in the addition of clarifying text, but did not significantly change proposed land-use plan decisions. Adjustments and clarifications have also been made to the preferred alternative in the Draft EIS, which is now presented as the proposed plan in the Moab MLP/FEIS.

Instructions for filing a protest with the BLM Director regarding the Moab MLP/Proposed RMP Amendments/Final EIS may be found in the "Dear Reader" letter of the Moab MLP/Proposed RMP Amendments/Final EIS, and in the Federal regulations at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above. Emailed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular mail or overnight delivery postmarked by the close of the protest period. Under these conditions, the BLM will consider the email as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct emails to *protest@blm.gov.*

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5.

Jenna Whitlock,

Acting State Director.

[FR Doc. 2016–17592 Filed 7–25–16; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Update to Notice of Availability of a Final Supplemental Environmental Impact Statement for the Jamul Indian Village Proposed Gaming Management Agreement, San Diego County, California

AGENCY: National Indian Gaming Commission (NIGC), Interior.

ACTION: Notice of Availability (NOA).

SUMMARY: In accordance with Section 102(2)(C) of the National Environmental Policy Act (NEPA) 42 U.S.C. 4321 *et seq.*, the NIGC, in cooperation with the Jamul Indian Village has prepared a Final Supplemental Environmental Impact Statement (Final SEIS) for the proposed Gaming Management Agreement (GMA) between the Jamul Indian Village (JIV) and San Diego Gaming Ventures (SDGV). If approved, the GMA would allow SDGV to assume responsibility for operation and management of the JIV Gaming Facility located in San Diego County, California. The Final SEIS addresses the effects of GMA approval and the No Action Alternative, which assumes no GMA, is approved. The SEIS also updates the environmental baseline given the time that has passed and the changes that have been made to the scope of the Proposed Action, which was originally addressed in the 2003 Final EIS.

FOR FURTHER INFORMATION CONTACT: For further information or to request a copy of the Final SEIS, please contact: Andrew Mendoza, Staff Attorney, National Indian Gaming Commission Office of the General Counsel 1849 C Street NW., Mail Stop #1621, Washington, DC 20240, Phone: 202–632–7003: Facsimile: 202–632–7066: email: *Andrew Mendoza@nigc.gov.*

Availability of the Final SEIS: The Final SEIS is available for public review at the following locations:

The Rancho San Diego Public Library, 11555 Via Rancho San Diego, El Cajon, CA 92019, telephone (619) 660–5370; and

The Jamul Indian Village Tribal Office, 14191 #16 Highway 94. Jamul, CA 91935, telephone (619) 669–4785.

Copies of the Final SEIS will also be available for download from the Tribe's Web site *www.jamulindianvillage.com.*

SUPPLEMENTARY INFORMATION: The JIV Reservation is located in the unincorporated portion of southwestern San Diego County approximately one mile south of the community of Jamul on approximately six-acres of land held in federal trust. State Route 94 (SR–94) provides regional access to the JIV from downtown San Diego, which is located approximately 20 miles to the west where it intersects with Highway 5. Local access to the JIV is provided directly from SR–94 via Daisy Drive. From the JIV, SR–94 travels briefly north and then west to Downtown San Diego, passing through the unincorporated communities of Jamul, Casa de Oro, Spring Valley and Lemon Grove.

In 2000, JIV proposed a fee-to-trust land acquisition, construction and operation of a gaming complex and approval of a gaming development and management agreement for operation of the JIV Gaming Facility. The proposal was evaluated in a Final EIS prepared in 2003. Since that time, several major items have been removed from JIV's overall development program and the Gaming Facility has been redesigned to fit entirely within the existing JIV Reservation. All environmental effects of the Gaming Facility redesign have been evaluated through preparation of a Final Tribal Environmental Evaluation, which was prepared in accordance with the 1999 Tribal/State Compact. No action is before the BIA due to no fee-to-trust component of the JIV proposal. An action from the NIGC is required; specifically, approval or disapproval of the GMA. That approval or disapproval is the Proposed Action evaluated in the Final SEIS.

In addition to the Proposed Action, the Final SEIS addresses the No Action Alternative, which assumes no approval of the GMA between JIV and SDGV. Under the No Action scenario, JIV would assume operation and management responsibilities of the Jamul Gaming Facility. The NIGC may, in its Record of Decision, select the No Action Alternative rather than the Proposed Action.

This Final SEIS updates environmental conditions in the affected area given the amount of time that has passed since the 2003 Final EIS. Environmental issues addressed within the Final SEIS include land resources, water resources, air quality, biological resources, cultural/paleontological resources, socioeconomic conditions, transportation, land use, public services, hazardous materials, noise, and visual resources. The Final SEIS examines the direct, indirect, and cumulative effects of each alternative on these resources. The NIGC published a Notice of Intent (NOI) in the **Federal Register** on April 10, 2013, describing the Proposed Action, announcing the NIGC's intent to prepare a Draft SEIS for the Proposed Action, and inviting comments.

The Draft EIS Notice of Availability (NOA) was published in the **Federal Register** by the U.S. Environmental Protection Agency (EPA) on April 8, 2016 and the Draft SEIS was made available to federal, Tribal, state, and local agencies and other interested parties for review and comment. The comment period was open for 45 days after the date of publication in the **Federal Register** and closed on May 23, 2016. A total of nine comment letters were received. All comments received by the NIGC were considered and addressed in the Final SEIS, however, no substantive changes were made.

The EPA published the NOA of the Final SEIS in the **Federal Register** on July 8, 2016 The Chairman of the NIGC will prepare and sign the record of decision (ROD) to announce his final decision on the GMA between the JIV and SDGV following the August 8, 2016 conclusion of the 30 day public comment and review period. Availability of the ROD will be announced to the media and the project mailing list, and the ROD itself will be made available online.

Submittal of Written Comments: You may mail or email, written comments to NIGC, Attn: Andrew Mendoza, Staff Attorney, c/o Department of the Interior, 1849 C Street NW., Mail Stop #1621, Washington, DC 20240 email: *Andrew Mendoza @nigc.gov.* Please include your name, return address, and the caption: "Final SEIS Comments, Jamul Indian Village," on the first page of your written comments. In order to be fully considered, written comments on the Final SEIS must be postmarked by August 8, 2016.

Commenting individuals may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. Anonymous comments will not, however, be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available to public in their entirety.

Authority: This notice is published in accordance with 25 U.S.C. 2711, section 1503.l of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), and the Department of the Interior regulations (43 CFR part 46), implementing the procedural requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*)

Dated: July 20, 2016.

Michael Hoenig,

General Counsel.

[FR Doc. 2016–17589 Filed 7–25–16; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CR–HPS–21568; PPWOCRADI0, PCU00RP14.R50000 (166)]

Information Collection Request Sent to the Office of Management and Budget for Approval; Historic Preservation Certification Application

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to Office of Management and Budget (OMB) for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on July 31, 2016. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before August 25, 2016.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Mail Stop 242, Reston, VA 20192 (mail); or *madonna_baucum@nps.gov* (email). Please reference OMB Control Number

1024–0009 in the subject line of your comments. You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Brian Goeken, Chief, Technical Preservation Services, 1849 C St. NW., (2255), Washington, DC 20240. You may send an email to *brian_goeken@nps.gov* or via fax at (202) 371–1616.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Federal Historic Preservation Tax Incentives Program encourages private sector investment in the rehabilitation and re-use of historic buildings. Through this program, underutilized or vacant schools, warehouses, factories, retail stores, apartments, hotels, houses, offices, and other buildings throughout the country, of every period, size, style and type, have been returned to useful life in a manner that maintains their historic character. To be eligible for the tax incentives for historic buildings, the building must be listed individually on the National Register of Historic Places (NRHP); or located in a registered historic district and certified by the NPS as contributing to the historic significance of that district. A registered historic district is any district listed on the NRHP; or a state or local district if the district and the enabling statue have also been certified by the NPS. The NRHP is the official list of the Nation's historic places worthy of preservation.

Section 47 of the Internal Revenue Code requires that the Secretary of the Interior certify to the Secretary of the Treasury upon application by owners of historic properties for Federal tax benefits: (a) The historic character of the property, and (b) that the rehabilitation work is consistent with that historic character. We administer the program with the Internal Revenue Service in partnership with the State Historic Preservation Offices (SHPOs). Owners of historic buildings use the Historic Preservation Certification Application (Forms 10–168, 10–168a, 10–168b, and 10–168c) to evaluate the condition and historic significance of buildings undergoing rehabilitation for continued use, and to evaluate whether or not the rehabilitation work meets the Secretary of the Interior's Standards for Rehabilitation.

Regulations at 36 CFR part 67 contain a requirement for completion of an application form. We need the information required on the application form to allow the authorized officer to determine if the applicant is qualified to obtain historic preservation certifications from the Secretary of the Interior. These certifications are necessary for an applicant to receive substantial Federal tax incentives authorized by section 47 of the Internal Revenue Code. These incentives include a 20% Federal income tax credit for the rehabilitation of historic buildings and an income tax deduction for the donation of easements on historic properties. The Internal Revenue Code also provides a 10% Federal income tax credit for the rehabilitation of nonhistoric buildings built before 1936, and an owner of a nonhistoric building in a historic district must also use the application to obtain a certification from the Secretary of the Interior that his or her building does not contribute to the significance of the historic district before claiming this lesser tax credit for rehabilitation.

State Historic Preservation Offices (SHPOs) are the first point of contact for property owners wishing to use the rehabilitation tax credit. They help applicants determine if an historic building is eligible for Federal or State historic preservation tax incentives, provide guidance on an application before or after the project begins, and provide advice on appropriate preservation work. SHPOs use Forms 10–168d and 10–168e to make recommendations to NPS.

In accordance with 36 CFR part 67, we also collect information for: (1) Certifications of State and local statutes (§ 67.8), (2) certifications of State or local historic districts (§ 67.9), and (3) appeals (§ 67.10).

II. Data

OMB Control Number: 1024–0009.

Title: Historic Preservation Certifications, 36 CFR part 67.

Service Form Number(s): NPS Forms 10–168, 10–168a, 10–168b, 10–168c, 10–168d, and 10–168e.

Type of Request: Revision of a currently approved collection.

Description of Respondents: Individuals, organizations, businesses, and State, local, or tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Estimated total annual responses	Estimated average completion time	Estimated total annual burden hours *
Form 10–168 (Part 1):			
Individuals	74	27	1,998
Private Sector	1,401	27	37,827
Form 10–168a (Part 2):			
Individuals	65	51	3,315
Private Sector	1,242	51	63,342
Form 10–168b (Amendment):			
Individuals	94	15	1,410
Private Sector	1,795	15	26,925
Form 10–168c (Part 3):			
Individuals	44	17	748
Private Sector	841	17	14,297
Forms 10–168d and 10–168e (State Review Sheets):			
Form 10–168d	1,475	2.5	3,688
Form 10–168e (Part 2s)	1,307	5	6,535
Form 10–168e (Part 3s)	885	3.5	3,098
Form 10–168e (for Amds.)	1,889	2.5	4,723
Certification of Statutes	1	5	5
Cert of Historic Districts	3	60	180
Appeals:			
Individuals	4	40	160
Private Sector	30	40	1,200

Activity	Estimated total annual responses	Estimated average completion time	Estimated total annual burden hours *
Totals	11,150		169,451

* Rounded.

Estimated Annual Nonhour Cost Burden: $3,973,359 based primarily on application fees and other costs (includes printing photographs and architectural drawings).

III. Comments

On January 13, 2016, we published in the **Federal Register** (81 FR 1640) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on March 14, 2016. We received no comments in response to the Notice.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: July 20, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–17701 Filed 7–25–16; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–21533; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before July 9, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by August 10, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before July 9, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

DISTRICT OF COLUMBIA

District of Columbia

Denrike Building, 1010 Vermont Ave. NW., Washington, 16000542

HAWAII

Hawaii County

Seishiro Hasegawa Ltd. Store Building, (Honakaa Town, Hawaii MPS) 45–3787 Mamane St., Honoka'a, 16000543

MASSACHUSETTS

Essex County

Soldiers and Sailors Memorial Building, 363 Main St., West Newberry, 16000544

MISSOURI

Jackson County

Spofford Home for Children, 5501 Cleveland Ave., Kansas City, 16000545

Jasper County

Buchanan, Lucius P., House, 3708 E. University Pkwy., Joplin, 16000546

St. Louis Independent city

Mansion House Center Historic District, 200–444 N. 4th St., St. Louis (Independent City), 16000547

Midwest Terminal Building, 700–720 N. Tucker Blvd., St. Louis (Independent City), 16000548

NEW MEXICO

Bernalillo County

Zimmerman Library, (Buildings Designed by John Gaw Meem MPS) 1900 Roma Ave. NE., Albuquerque, 16000549

Lincoln County

Carrizozo Commercial Historic District, Roughly bounded by Brick & D Aves., 11th & 13th Sts., Carrizozo, 16000550

NEW YORK

Bronx County

Fort Independence Historic District, Cannon Place, Orloff & Sedgewick Aves., Giles Place, Kingsbridge, 16000551

Dutchess County

Haxtun—Tower House, 4 Baker Rd., Hopewell Junction, 16000552

Lewis County

Old Lowville Cemetery, 5515 Jackson & 5575 River Sts., Lowville, 16000553

Monroe County

Conant, Austin R., House, 30 West St., Fairport, 16000554

Webster Grange No. 436, 58 E. Main St., Webster, 16000555

St. Lawrence County

Hepburn Library of Lisbon, 6899 Lisbon Center State Rd., Lisbon, 16000556

Suffolk County

Benner—Foos—Ceparano Estate, 99 Van Brunt Manor & 6 Osprey Ln., Poquott, 16000557

Ulster County

Parker, Alton B., Estate, 14 Lamont Landing Rd., Esopus, 16000558

Wyoming County

Woodward, Orator F., Cottage, 3931 Thompson Ave., Silver Lake, 16000559

NORTH CAROLINA

Gaston County

Cherryville Downtown Historic District, Main, Mountain, 1st, S. Jacob, S. Oak & N. Mulberry Sts., Cherryville, 16000560

Nash County

Burt—Arrington House, 784 W. Hilliardston Rd., Hilliardston, 16000561

Scotland County

St. Andrews Presbyterian College, 1700 Dogwood Mile, Laurinburg, 16000562

RHODE ISLAND

Providence County

Second Battle of Nipsachuck Battlefield, Address Restricted, North Smithfield, 16000563

WISCONSIN

Door County

GRAPE SHOT (schooner) Shipwreck, (Great Lakes Shipwreck Sites of Wisconsin MPS) .2 mi. NW. of USCCG Station on Plum Island, Washington, 16000564

Manitowoc County

S.C. BALDWIN Shipwreck (barge), (Great Lakes Shipwreck Sites of Wisconsin MPS) 2.3 mi. SSE. of Rawley Point Lighthouse in L. Michigan, Two Rivers, 16000565

Racine County

Orchard Street Historic District, Generally bounded by Haven & Lindermann Aves., Russet & Kentuckey Sts., Racine, 16000566

Rock County

Greenman, Reynolds and Lois, House, 12 Merchant Row, Milton, 16000567

Owen, John and Margaret, House, 33 2nd St., Milton, 16000568

Seventh Day Baptist Church, 720 E. Madison Ave., Milton, 16000569

Authority: 60.13 of 36 CFR part 60.

Dated: July 13, 2016.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2016–17594 Filed 7–25–16; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–21474; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before July 2, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by August 10, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before July 2, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

CALIFORNIA

San Benito County

Lyons, Harrison, Homestead Historic District, Address Restricted, Paicines, 16000521

San Bernardino County

Providence Townsite, 10.7 mi. off Essex Rd., Essex, 16000522

DISTRICT OF COLUMBIA

District of Columbia

Mount Vernon Seminary for Girls, 3801 Nebraska Ave. NW., Washington, 16000523

MICHIGAN

Kalamazoo County

Lee Paper Company Mill Complex, 300 W. Highway St., Vicksburg, 16000524

OHIO

Licking County

Dawes Arboretum, The, 7770 Jacksontown Rd. SE., Newark, 16000525

VERMONT

Windsor County

Marsh—Billings—Rockefeller National Historical Park, (Agricultural Resources of Vermont MPS) 54 Elm St., Woodstock, 16000526

VIRGINIA

Amherst County

Brightwells Mill Complex, 586 Brightwells Mill Rd., Madison Heights, 16000527

Frederick County

Thorndale Farm, 652 N. Buckton Rd., Middletown, 16000528

Goochland County

Belvidere, 4024 Pace Rd., Hadensville, 16000529

Lexington Independent City

Jordan's Point Historic District, Moses Mill Rd. & confluence of Maury R. & Woods Cr., Lexington (Independent City), 16000530

Loudoun County

Brown—Koerner House, 38340 Winsome Trail Ln., Purcellville, 16000531

Madison County

Belle Plaine, 2488 S. James Madison Hwy., Locust Dale, 16000532

Manassas Independent City

Manassas Water Tower, 9000 Quarry St., Manassas (Independent City), 16000533

Nelson County

South Rockfish Valley Rural Historic District, Rockfish Valley Hwy. & feeder roads, Nellysford, 16000534

Norfolk Independent City

Virginia National Bank Headquarters Historic District, Bounded by Commercial Place, Waterside Dr., E. Plume & Atlantic Sts., Norfolk (Independent City), 16000535

Richmond Independent City

American Tobacco Company, South Richmond Complex Historic District, (Tobacco Warehouses in Richmond, Virginia, 1874–1963 MPS) 400–800 Jefferson Davis Hwy., Richmond (Independent City), 16000536

Baker Public School, 100 W. Baker St., Richmond (Independent City), 16000537

Blair Tobacco Storage Warehouse Complex Historic District, (Tobacco Warehouses in Richmond, Virginia, 1874–1963 MPS) 2601 Maury St., Richmond (Independent City), 16000538

Southampton County

Courtland School, (Rosenwald Schools in Virginia MPS) 25499 Florence St., Courtland, 16000539

Tazewell County

Clynchdale, 146 Beartown Rd., Tazewell, 16000540

Tazewell Historic District (Boundary Increase), 100 blk. W. Fincastle Tnpk., 200–300 blks. W. Main & 300 blk. W. Pine Sts., Tazewell, 16000541

Authority: 60.13 of 36 CFR part 60.

Dated: July 5, 2016.

Christopher Hetzel,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2016–17595 Filed 7–25–16; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0019; DS63642000 DR2000000.CH7000 167D0102R2]

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Amendment.

SUMMARY: On June 8, 2016, ONRR published (at 81 FR 36954) a notice of the due date for industry to pay additional royalties based on the major portion prices, titled "Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated with an Index Zone." ONRR is amending the due date to pay additional royalties based on the major portion prices from August 8, 2016 to August 31, 2016.

FOR FURTHER INFORMATION CONTACT: Michael Curry, Manager, Denver B, Western Audit & Compliance, ONRR; telephone (303) 231–3741; fax number (303) 231–3473; email *Michael.Curry@onrr.gov;* or Rob Francoeur, Denver B, Team 2, Western Audit & Compliance, ONRR; telephone (303) 231–3723; fax (303) 231–3473; email *Rob.Francoeur@onrr.gov.* Mailing address: Office of Natural Resources Revenue, Western Audit & Compliance, Denver B, P.O. Box 25165, MS 62520B, Denver, Colorado 80225–0165.

Dated: July 19, 2016.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2016–17600 Filed 7–25–16; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians

[DT21200000 DST000000.T7AC00.241A]

Notice of Proposed Renewal of Information Collection: OMB Control Number 1035–0004, Trust Funds for Tribes and Individual Indians

AGENCY: Office of the Secretary, Office of the Special Trustee for American Indians.

ACTION: Notice and request for comments.

SUMMARY: In compliance the Paperwork Reduction Act of 1995, the Office of the Special Trustee for American Indians, Department of the Interior, has requested approval for the renewal of the collection of information for "Trust Funds for Tribes and Individual Indians, 25 CFR 115," OMB Control No. 1035–0004. This collection request has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days; therefore, public comments should be submitted to OMB by *August 25, 2016,* in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (1035–0004), by telefax at (202) 395–5806 or via email to *OIRA_submission@omb.eop.gov.* Also, please send a copy of your comments to Dianne M. Moran, Field Operations, Office of the Special Trustee for American Indians, 4400 Masthead St. NE., Albuquerque, New Mexico 87109 or email them to: *Dianne_Moran@ost.doi.gov.* Individuals providing comments should reference "Trust Funds for Tribes and Individual Indians, 25 CFR 115," OMB Control No. 1035–0004.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, any explanatory information and related forms, contact Dianne M. Moran as noted in the **ADDRESSES** section above. To see a copy of the entire ICR submitted to OMB, go to: *http://www.reginfo.gov* and select Information Collection Review, Currently Under Review.

SUPPLEMENTARY INFORMATION:

I. Abstract

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–131), require that interested members of the public and affected parties have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of the Special Trustee for American Indians has submitted to OMB for renewal.

As codified in 25 U.S.C. 4001, The American Indian Trust Fund Management Reform Act of 1994 (the Reform Act) makes provisions for the Office of the Special Trustee for American Indians to administer trust fund accounts for individuals and tribes. The collection of information is required to facilitate the processing of deposits, investments, and distribution of monies held in trust by the U.S. Government and administered by the Office of the Special Trustee for American Indians. The collection of information provides the information needed to establish procedures to: Deposit and retrieve funds from accounts, perform transactions such as cashing checks, reporting lost or stolen checks, stopping payment of checks, and general verification for account activities.

II. Data

(1) *Title:* Trust Funds for Tribes and Individuals Indians, 25 CFR 115.

OMB Control Number: 1035–0004.

Current Expiration Date: July 31, 2016.

Type of Review: Extension without change of a currently approved collection.

Affected Entities: Individual Indians who wish to initiate some activity on their accounts.

Estimated annual number of respondents: 74,905.

Frequency of response: 1.

(2) *Annual reporting and record keeping burden:*

Total annualized reporting per respondent: 1/4 hour.

Total annualized reporting: 18,726 hours.

(3) *Description of the need and use of the information:* This information collection is used to process deposits, investments, and distribution of monies held in trust by the Special Trustee for individual Indians in the administration of these accounts. The respondents submit information in order to gain or retain a benefit, namely, access to funds held in trust.

(4) As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the information collection was published on March 21, 2016 (81 FR 15120). No comments were received. This notice provides the public with an additional 30 days in which to comment on the proposed information collection activity.

III. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information techniques.

"Burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

While you may ask us in your comment to withhold PII from public view, we cannot guarantee that we will be able to do so.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

David Alspach,

Information Collection Clearance Officer, Office of the Secretary, Department of the Interior.

[FR Doc. 2016–17549 Filed 7–25–16; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0020]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Firearms Transaction Record (ATF Form 4473 (5300.9)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** 81 *FR* 20424, on April 7, 2016, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until August 25, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Helen Koppe, Program Manager, ATF Firearms & Explosives Industry Division, 99 New York Avenue NE., Washington, DC 20226 at email: *FederalRegisterNoticeATFF4473@atf.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1 *Type of Information Collection:* Revision of a currently approved collection.

2 *The Title of the Form/Collection:* Firearms Transaction Record Outreach.

3 *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 4473 (5300.9.).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4 *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: Business or other for-profit.

Abstract: The information and certification on the Form 4473 are designed so that a person licensed under 18 U.S.C. 923 may determine if he or she may lawfully sell or deliver a firearm to the person identified in Section A. It also alerts buyers to certain restrictions on the receipt and possession of firearms.

5 *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 18,275,240 respondents will take 30 minutes to complete the form.

6 *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 9,137,620 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: July 21, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–17616 Filed 7–25–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Statutory Exemption for Cross-Trading of Securities

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Statutory Exemption for Cross-Trading of Securities," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 25, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605–1210–005* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue, NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Statutory Exemption for Cross-Trading of Securities information collection requirements codified in regulations 29 CFR 2550.408b–19 that implements the content requirements for written cross-trading policies and procedures required under Employee Retirement Income Security Act of 1974 (ERISA) section 408(b)(19)(H). ERISA section 408(b)(19) exempts cross-trading transactions involving the purchase and sale of a security between an account holding assets of a pension plan and any other account managed by the same investment manager from ERISA sections 406(a)(1)(A) and 406(b)(2) prohibitions, provided that certain conditions are satisfied.

Regulations 29 CFR 2550.408b–19 provides that policies and procedures for cross-trading under the statutory exemption must: (1) be written in a manner calculated to be understood by the plan fiduciary authorizing cross-trading, (2) be sufficiently detailed to facilitate a periodic review of all cross-trades by a compliance officer designated by the investment manager and a determination by the compliance officer that the cross-trades comply with the investment manager's written cross-trading policies and procedures, and (3) include, at a minimum: (A) a statement of general policy describing the criteria that will be applied by the investment manager in determining whether execution of a securities transaction as a cross-trade will be beneficial to both parties to the transaction; (B) a description of how the investment manager will determine the price at which the securities are cross-traded, in a manner that is consistent with 17 CFR 270.17a–7(b) and Securities and Exchange Commission interpretations thereunder, including the identity of sources used to establish the price; (C) a description of how the investment manager's policies and procedures will mitigate any potentially conflicting division of loyalties and responsibilities to the parties involved in any cross-trade transaction; (D) a requirement that the investment manager allocate cross-trades among accounts participating in the cross-trading program in an objective and equitable manner and a description of the policies and procedures that will be used; (E) the identity of the compliance officer responsible for reviewing the investment manager's compliance with ERISA section 408(b)(19) and its written cross-trading policies and procedures and the compliance officer's qualifications for this position; (F) the steps to be performed by the compliance officer during its periodic review of the investment manager's purchases and sales of securities to ensure compliance with the written cross-trading policies and procedures; and (G) a description of the procedures by which the compliance officer will determine whether the requirements of section 408(b)(19) are met. Pension Protection Act section 611(g) authorizes this information collection. *See* Public Law 109–280 section 611(g)(3).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0130.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on July 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 23, 2015 (80 FR 72990).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0130. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Statutory Exemption for Cross-Trading of Securities.

OMB Control Number: 1210–0130.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 319.

Total Estimated Number of Responses: 2,870.

Total Estimated Annual Time Burden: 3,333 hours.

Total Estimated Annual Other Costs Burden: $14,000.

Dated: July 18, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–17555 Filed 7–25–16; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the "American Time Use Survey." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before September 26, 2016.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, at 202–691–7763 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The ATUS is the Nation's first federally administered, continuous survey on time use in the United States. It measures, for example, time spent with children, working, sleeping, or doing leisure activities. In the United States, several existing Federal surveys collect income and wage data for individuals and families, and analysts often use such measures of material prosperity as proxies for quality of life. Time-use data substantially augment these quality-of-life measures. The data also can be used in conjunction with wage data to evaluate the contribution of non-market work to national economies. This enables comparisons of production between nations that have different mixes of market and non-market activities.

The ATUS develops nationally representative estimates of how people spend their time. Respondents also report who was with them during activities, where they were, how long each activity lasted, and if they were paid. All of this information has numerous practical applications for sociologists, economists, educators, government policymakers, businesspersons, health researchers, and others, answering the following questions:

- Do the ways people use their time vary across demographic and labor force characteristics, such as age, sex, race, ethnicity, employment status, earnings, and education?
- How much time do parents spend in the company of their children, either actively providing care or being with them while socializing, relaxing, or doing other things?
- How are earnings related to leisure time—do those with higher earnings spend more or less time relaxing and socializing?
- How much time do people spend working at their workplaces and in their homes?

The ATUS data are collected on an ongoing, monthly basis, allowing analysts to identify changes in how people spend their time.

II. Current Action

Office of Management and Budget clearance is being sought for the American Time Use Survey.

This survey collects information on how individuals in the United States use their time. Collection is done on a continuous basis with the sample drawn monthly. The survey sample is drawn from households completing their 8th month of interviews for the Current Population Survey (CPS). Households are selected to ensure a nationally-representative demographic sample, and one individual from each household is selected to take part in one Computer Assisted Telephone Interview. Interviewers ask respondents to report all of their activities for one pre-assigned 24-hour day, the day prior to the interview. A short series of summary questions and CPS updates follows the core time diary collection. After each full year of collection, annual national estimates of time use for an average day, weekday, and weekend day are available.

Because the ATUS sample is a subset of households completing interviews for the CPS, the same demographic information collected from that survey is available for ATUS respondents. Comparisons of activity patterns across characteristics such as sex, race, age, disability status, and education of the respondent, as well as the presence of children and the number of adults living in the respondent's household, are possible.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: Extension without change of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: American Time Use Survey.

OMB Number: 1220–0175.

Affected Public: Individuals or households.

Total Respondents: 11,800.

Frequency: Annually.

Total Responses: 11,800.

Average Time per Response: 17.5 minutes.

Estimated Total Burden Hours: 3,450 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 21st day of July 2016.

Kimberley Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2016–17613 Filed 7–25–16; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed request for a new OMB control number for the "Leave Supplement to the American Time Use Survey." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before September 26, 2016.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, at 202–691–7763 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The American Time Use Survey (ATUS) is the Nation's first federally administered, continuous survey on time use in the United States. It measures, for example, time spent with children, working, sleeping, or doing leisure activities. In the United States, several existing Federal surveys collect income and wage data for individuals and families, and analysts often use such measures of material prosperity as proxies for quality of life. Time-use data substantially augment these quality-of-life measures. The data also can be used in conjunction with wage data to evaluate the contribution of non-market work to national economies. This enables comparisons of production between nations that have different mixes of market and non-market activities.

The ATUS is used to develop nationally representative estimates of how people spend their time. This is done by collecting a time diary about the activities survey respondents did over a 24-hour period "yesterday," from 4 a.m. on the day before the interview until 4 a.m. on the day of the interview. In the one-time interview, respondents also report who was with them during the activities, where they were, how long each activity lasted, and if they were paid. All of this information has numerous practical applications for sociologists, economists, educators, government policymakers, businesspersons, health researchers, and others.

The Leave Supplement supports the mission of the Bureau of Labor Statistics by providing relevant information on economic and social issues. The data from the proposed Leave Supplement can be used for research on the relationships between work schedules, job flexibilities, access to leave, and time use. These data enhance the understanding of peoples' overall well-being. The Supplement surveys employed wage and salary workers, except those who are self-employed, aged 15 and up from a nationally representative sample of approximately 2,100 sample households each month.

The proposed Leave Supplement will collect data about workers' access to and use of paid and unpaid leave, job flexibility, and their work schedules. The collection of the Leave Supplement in 2017 is the second effort to gather data on workers' access to paid and unpaid leave. A Leave Supplement similar to the one being proposed was attached to the ATUS in 2011 and collected under the ATUS OMB Number 1220–0175. The proposed 2017 Leave Supplement includes several questions that were not included in the 2011 Supplement. This includes questions about shift work, advance notice of work schedules, workers' control over their schedules, flexible start and stop times, and work at home arrangements. These questions will provide an additional dimension to analyses of workers' job flexibility data.

II. Current Action

Office of Management and Budget clearance for a new OMB control number is being sought for the Leave Supplement to the American Time Use Survey.

Data about leave currently are available from the BLS National Compensation Survey, but these data are collected from establishments and do not include information about workers' demographic and household characteristics. The proposed questions will provide information about workers' access to leave from workers' perspectives and by various characteristics such as their sex, ethnicity, race, and the presence and age of children in the household. The BLS National Longitudinal Survey collects some information about leave from employed individuals, but these data are available only for specific cohorts and not the entire population.

Information about flexible work schedules is available through the CPS Work Schedules and Work at Home Supplement, but the Supplement has not been conducted since May 2004. The proposed Leave Supplement questions will collect data about leave, job flexibilities, and work schedules from a sample of individuals who are representative of the U.S. civilian noninstitutional population ages 15 and over, which is something existing surveys do not do.

Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: New collection (Request for a new OMB control Number).

Agency: Bureau of Labor Statistics.

Title: Leave Supplement to the American Time Use Survey.

OMB Number: 1220—NEW.

Affected Public: Individuals or Households.

Total Respondents: 5950.

Frequency: One time.

Total Responses: 5950.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 500 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 21st day of July 2016.

Kimberley Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2016–17641 Filed 7–25–16; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–456 and 50–457; NRC–2016–0147]

Exelon Generation Company, LLC; Braidwood Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Renewed Facility Operating License Nos. NPF–72 and NPF–77 issued to Exelon Generation Company, LLC (Exelon, the licensee) for operation of Braidwood Station, Units 1 and 2 (Braidwood), located in Will County, Illinois. The proposed amendments would revise the maximum allowable technical specification (TS) temperature of the ultimate heat sink (UHS) for the plant. The NRC staff is issuing a final environmental assessment (EA) and finding of no significant impact (FONSI) associated with the proposed license amendments.

DATES: The environmental assessment and finding of no significant impact referenced in this document is available on July 26, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0147 when contacting the NRC about the availability of information regarding this document. You may obtain publically-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0147. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided in a table in the "Availability of Documents" section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Joel S. Wiebe, Office of Nuclear Reactor Regulation; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6606; email: *Joel.Wiebe@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of amendments to Renewed Facility Operating License Nos. NPF–72 and NPF–77 issued to Exelon for operation of Braidwood located in Will County, Illinois. Exelon submitted its license amendment request in accordance with section 50.90 of title 10 of the *Code of Federal Regulations* (10 CFR), by letter dated August 19, 2014 (ADAMS Accession No. ML14231A902). Exelon subsequently supplemented its request as described under "Description of the Proposed Action" in Section II of this document. If approved, the license amendments would increase the allowable TS temperature limit of the cooling water supplied to the plant from the UHS from less than or equal to (≤) 100 degrees Fahrenheit (°F) (37.8 degrees Celsius [°C]) to ≤102 °F (38.9 °C). The NRC staff prepared an EA to document its findings related to the proposed license amendments in accordance with 10 CFR 51.21. Based on results of the EA documented herein, the NRC did not identify any significant environmental impacts associated with the proposed amendments and is, therefore, issuing a FONSI in accordance with 10 CFR 51.32.

II. Environmental Assessment

Plant Site and Environs

Braidwood is located in Will County, Illinois, approximately 50 miles (mi; 80 kilometers [km]) southwest of the

Chicago Metropolitan Area and 20 mi (32 km) south-southwest of Joliet. The Kankakee River is approximately 5 mi (8 km) east of the eastern site boundary. An onsite 2,540-acre (ac; 1,030-hectare [ha]) cooling pond provides condenser cooling. Cooling water is withdrawn from the pond through the lake screen house, which is located at the north end of the pond. Heated water returns to the cooling pond through a discharge canal west of the lake screen house intake that is separated from the intake by a dike. The pond typically holds 22,300 acre-feet (27.5 million cubic meters) of water at any given time. The cooling pond includes both "essential" and "non-essential" areas. The essential cooling pond is the portion of the cooling pond that serves as the UHS for emergency core cooling, and it consists of a 99-ac (40-ha) excavated area of the pond directly in front of the lake screen house. The essential cooling pond's principle functions are to dissipate residual heat after reactor shutdown and to dissipate heat after an accident. It is capable of supplying Braidwood's cooling system with 30 days of station operation without additional makeup water. For clarity, use of the term "UHS" in this document refers to the 99-ac (40-ha) essential cooling pond, and use of the term "cooling pond" or "pond" describes the entire 2,540-ac (1,030-ha) area, which includes both the essential and non-essential areas.

The cooling pond is part of the Mazonia-Braidwood State Fish and Wildlife Area, which encompasses the majority of the non-UHS area of the cooling pond as well as Illinois Department of Natural Resources (IDNR)-owned lands adjacent to the Braidwood site to the south and southwest of the cooling pond. Exelon and the IDNR have jointly managed the cooling pond as part of the Mazonia-Braidwood State Fish and Wildlife Area since 1991 pursuant to a long-term lease agreement. Under the terms of the agreement, the public has access to the pond for fishing, waterfowl hunting, fossil collecting, and other recreational activities.

The cooling pond is a wastewater treatment works as defined by Section 301.415 of Title 35 of the *Illinois Administrative Code* (35 IAC 301.415). Under this definition, the cooling pond is not considered waters of the State under *Illinois Administrative Code* (35 IAC 301.440) or waters of the United States under the Federal Clean Water Act (40 CFR 230.3(s)), and so the cooling pond is not subject to State water quality standards. The cooling pond can be characterized as a managed ecosystem where IDNR fish stocking and other human activities primarily influence the species composition and population dynamics.

Since the beginning of the lease agreement between Exelon and IDNR, the IDNR has stocked the cooling pond with a variety of game species, including largemouth bass (*Micropterus salmoides*), smallmouth bass (*M. dolomieu*), blue catfish (*Ictalurus furcatus*), striped bass (*Morone saxatilis*), crappie (*Pomoxis* spp.), walleye (*Sander vitreum*), and tiger muskellunge (*Esox masquinongy* × *lucius*). IDNR performs annual surveys to determine which fish to stock based on fishermen preferences, fish abundance, different species' tolerance to warm waters, predator and prey dynamics, and other factors. Because of the high water temperatures experienced in the summer months, introductions of warm-water species, such as largemouth bass and blue catfish, have been more successful than introductions of cool-water species, such as walleye and tiger muskellunge. Since annual surveys began in 1980, IDNR has collected 47 species in the cooling pond. In recent years, bluegill (*Lepomis macrochirus*), channel catfish (*Ictalurus punctatus*), threadfin shad (*Dorosoma petenense*), and common carp (*Cyprinus carpio*) have been among the most abundant species in the cooling pond. Gizzard shad (*Dorosoma cepedianum*), one of the most frequently affected species during periods of elevated pond temperatures, have decreased in abundance dramatically in recent years, while bluegill, which can tolerate high temperatures with relatively high survival, have noticeably increased in relative abundance. IDNR-stocked warm water game species, such as largemouth bass and blue catfish, continue to persist in small numbers, while cooler water stocked species, such as walleye and tiger muskellunge, no longer appear in IDNR survey collections. No Federally-listed species or designated critical habitats protected under the Endangered Species Act occur within or near the cooling pond.

The Kankakee River serves as the source of makeup water for the cooling pond. The river also receives continuous blowdown from the cooling pond. Water is withdrawn from a small river screen house located on the Kankakee River, and liquid effluents from Braidwood are discharged into the cooling pond blowdown line, which subsequently discharges into the Kankakee River.

The plant site and environs are described in greater detail in Chapter 3 of the NRC's November 2015, Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Braidwood Station, Units 1 and 2—Final Report (NUREG–1437, Supplement 55) (herein referred to as "Braidwood FSEIS" [Final Supplemental Environmental Impact Statement]). Figure 3–5 on page 3–7 of the Braidwood FSEIS depicts the Braidwood plant layout, and Figure 3–4 on page 3–6 depicts the cooling pond, including the portion of the pond that constitutes the essential cooling pond (or UHS) and the blowdown line to the Kankakee River.

Description of the Proposed Action

The proposed action would increase the allowable TS temperature limit of the cooling water supplied to the plant from the UHS from ≤100 °F (37.8 °C) to ≤102 °F (38.9 °C). Specifically, the proposed action would amend TS 3.7.9.2, which currently states, "Verify average water temperature of UHS is ≤100 °F." Under the current TS, if the average UHS temperature as measured at the discharge of the operating Essential Service Water system pumps is greater than 100 °F (37.8 °C), TS 3.7.9 Required Actions A.1 and A.2 would be entered concurrently and would require the licensee to place Braidwood in hot standby (Mode 3) within 6 hours and cold shutdown (Mode 5) within 36 hours. The proposed action would allow Braidwood to continue to operate during times when the UHS indicated temperature exceeds 100 °F (37.8 °C) but is less than or equal to 102 °F (38.9 °C). The proposed action would not modify the TS Required Actions, Completion Times, Frequency of Surveillance Requirement performance, or any other portion of TS 3.7.9. Therefore, the proposed amendments would require the licensee to place Braidwood in Mode 3 within 6 hours and Mode 5 within 36 hours if the UHS indicated temperature is greater than 102 °F (38.9 °C).

The proposed action to amend TS 3.7.9.2 is in accordance with the licensee's application dated August 19, 2014, as supplemented by letters dated January 20, 2015, March 31, 2015, April 30, 2015, August 24, 2015, October 9, 2015, October 30, 2015, November 9, 2015, December 16, 2015, February 12, 2016, April 29, 2016, and June 16, 2016.

Need for the Proposed Action

The proposed action is needed to provide the licensee with operational flexibility during periods of high UHS temperatures in order to avoid plant shutdown. These conditions include elevated air temperatures, high humidity, and low wind speed. For instance, in July 2012, Exelon requested, and the NRC approved, Enforcement Discretion to avoid plant shutdown and associated transient following unprecedented hot weather and drought conditions in northern Illinois that resulted in the Braidwood average discharge temperature of the essential service water pumps used to monitor compliance with TS 3.7.9.2 to exceed the limit of ≤100 °F (37.8 °C). The NRC's Enforcement Discretion allowed Exelon to continue to operate Braidwood with an average UHS water temperature of up to ≤102 °F (38.9 °C) for a period of 24 hours before Exelon would be required to place Braidwood in hot standby (Mode 3) in accordance with TS 3.7.9 Required Action A.1. The Enforcement Discretion period extended from July 7, 2012, at 3:56 p.m. until July 8, 2012, 3:56 p.m. During that time, the average UHS water temperature exceeded 100 °F (37.8 °C). Although Exelon did not anticipate making a license amendment request at the time of the NRC's Enforcement Discretion, Exelon is seeking the current license amendments in anticipation of future meteorological conditions that may continue to challenge the current UHS TS temperature limit of ≤100 °F (37.8 °C).

Environmental Impacts of the Proposed Action

With regard to radiological impacts, the proposed action would not result in any changes in the types of radioactive effluents that may be released from the plant offsite. No significant increase in the amount of any radioactive effluent released offsite or significant increase in occupational or public radiation exposure is expected from the proposed action. Separate from this EA, the NRC staff is evaluating the licensee's safety analyses of the potential radiological consequences of an accident that may result from the proposed action. The results of the NRC staff's safety analysis will be documented in a safety evaluation (SE). If the NRC staff concludes in the SE that all pertinent regulatory requirements related to radiological effluents are met by the proposed UHS temperature limit increase, then the proposed action would result in no significant radiological impact to the environment. The NRC staff's SE will be issued with the license amendments, if approved by the NRC.

With regard to potential non-radiological impacts, raising the maximum allowable UHS temperature from ≤100 °F (37.8 °C) to ≤102 °F (38.9 °C) could result in periods of increased cooling pond water temperatures, especially during periods of extreme high air temperatures, high humidity, and low wind. Because the proposed action would not affect Braidwood's licensed thermal power level, the temperature rise across the condensers as cooling water travels through the cooling system would remain constant. Therefore, if water in the UHS were to rise to 102 °F (38.9 °C), heated water returning to the cooling pond through the discharge canal, which lies west of the river screen house, would also experience a corresponding 2 °F (1.1 °C) increase. That additional heat load would dissipate across some thermal gradient as discharged water would travel down the discharge canal and through the 99-ac (40-ha) UHS.

Fish kills are likely to occur when cooling pond temperatures rise above 95 °F (35 °C), the temperature at which most fish in the cooling pond are thermally stressed. For example, Section 3.7.4 of the Braidwood FSEIS describes six fish kill events for the period of 2001 through 2015. The fish kill events, which occurred in July 2001, August 2001, June 2005, August 2007, June 2009, and July 2012, primarily affected threadfin shad and gizzard shad, although bass, catfish, carp, and other game fish were also affected. Reported peak temperatures in the cooling pond during these events ranged from 98.4 °F (36.9 °C) to over 100 °F (37.8 °C), and each event resulted in the death of between 700 to as many as 10,000 fish. The event identified in Exelon letter dated April 30, 2014, in which cooling pond temperatures exceeded 100 °F (37.8 °C) occurred on July 7 and 8, 2012, and resulted in the death of approximately 3,000 gizzard shad and 100 bass, catfish, and carp. This event coincided with the NRC's granting of Enforcement Discretion to allow Braidwood to continue to operate above the TS limit of ≤100 °F (37.8 °C) as previously described in the "Need for the Proposed Action" section of this document. The IDNR attributed this event, as well as four of the other fish kill events, to high cooling pond temperatures resulting from Braidwood operation. Appendix B, Section 4.1 of the Braidwood renewed facility operating licenses, requires Exelon to report to the NRC the occurrence of unusual or important environmental events, including fish kills. Since the issuance of the Braidwood FSEIS in November 2015, Exelon has not reported any additional fish kill events to the NRC.

In Section 4.7.1.3 of the Braidwood FSEIS, the NRC staff concluded that thermal impacts associated with continued operation of Braidwood during the license renewal term (*i.e.*, with a UHS TS limit of ≤100 °F) would result in SMALL to MODERATE impacts to aquatic resources in the cooling pond. MODERATE impacts would primarily be experienced by gizzard shad and other non-stocked and low-heat tolerant species. As part of its conclusion, the staff also noted that because the cooling pond is a highly managed system, any cascading effects that result from the loss of gizzard shad (such as reduction in prey for stocked species, which in turn could affect those stocked species' populations) could be mitigated through IDNR's annual stocking and continual management of the pond.

Regarding the proposed action, the proposed increase in the allowable UHS temperature limit would not increase the likelihood of a fish kill event attributable to high cooling pond temperatures because the current TS limit for the UHS of ≤100 °F (37.8 °C) already results in cooling pond temperatures above those at which most fish species are thermally stressed (95 °F (35 °C). In effect, if the UHS temperature rises to the current TS limit, fish within or near the discharge canal, within the flow path between the discharge canal and UHS, or within the UHS itself would have already experienced thermal stress and possibly died. Therefore, an incremental increase in the allowable UHS water temperature by 2 °F (1.1 °C) and the corresponding temperature increases within and near the discharge canal and within the flow path between the discharge canal and UHS would not significantly affect the number of fish kill events experienced in the cooling pond.

While the proposed action would not affect the likelihood of a fish kill event occurring during periods when the average UHS water temperature approaches the TS limit, the proposed action could increase the number of fish killed per high temperature event. For fish with thermal tolerances at or near 95 °F (35 °C), there would likely be no significant difference in the number of affected fish per high temperature event because, as already stated, these fish would have already experienced thermal stress and possibly died and the additional temperature increase would not measurably affect the mortality rate of these individuals. For fish with thermal tolerances above 95 °F (35 °C), such as bluegill, increased mortality is possible, as described below.

The available scientific literature provides conflicting information to support a clear determination of whether the incremental increase of 2 °F (1.1 °C) would result in a subsequent increase in the mortality rate of bluegill or other high-temperature-tolerant fish at temperatures exceeding 100 °F (37.8 °C). For instance, in laboratory studies, Banner and Van Arman (1973) demonstrated 85 percent survival of juvenile bluegill after 24 hours of exposure to 98.6 °F (37.0 °C) water for stock acclimated to 91.2 °F (32.9 °C). At 100.0 °F (37.8 °C), survival decreased to 25 percent, and at 100.4 °F (38.0 °C) and 102.0 °F (38.9 °C), no individuals survived. Even at one hour of exposure to 102.0 °F (38.9 °C) water, average survival was relatively low at between 40 to 67.5 percent per replicate. However, in another laboratory study, Cairns (1956 in Banner and Van Arman 1973) demonstrated that if juvenile bluegill were acclimated to higher temperatures at 3.6 °F (2.0 °C) per day, individuals could tolerate water temperatures up to 102.6 °F (39.2 °C) with 80 percent survival after 24 hours of exposure.

Although these studies provide inconsistent thermal tolerance limits, information from past fish kill events indicates that Cairns' results better describe the cooling pond's bluegill population because Exelon has not reported bluegill as one of the species that has been affected by past high temperature events, including the July 2012 event during which the cooling pond exceeded 100 °F (37.8 °C). Therefore, bluegill are likely acclimating to temperature rises at a rate that allows those individuals to remain in high temperature areas until temperatures decrease or that allows individuals time to seek refuge in cooler areas of the pond. Alternately, if Banner and Van Arman's results were more predictive, 75 percent or more of bluegill individuals in high temperature areas of the cooling pond could be expected to die at temperatures approaching or exceeding 100 °F (37.8 °C) for 24 hours, and shorter exposure time would likely result in the death of some reduced percentage of bluegill individuals. Exposure to temperatures approaching 102.0 °F (38.9 °C) for at least one hour would also result in observable deaths. However, as stated previously, Exelon has not reported bluegill as one of the species that has been affected during past fish kills. Consequently, the NRC staff assumes that bluegill and other high-temperature-tolerant species in the cooling pond would experience effects similar to those observed in Cairn's study.

Based on Cairn's results, the proposed action's incremental increase of 2 °F (1.1 °C) could result in the death of some additional high-temperature-tolerant individuals, especially in cases where cooling pond temperatures rise dramatically over a short period of time (more than 3.6 °F (2.0 °C) in a 24-hour period). These additional deaths would likely occur in the region of the UHS nearest to the intake because this water, which is likely near or slightly above 100 °F (37.8 °C) under current operations, could rise by an average of an additional 2 °F (1.1 °C). This scenario could create conditions just above those individuals' thermal tolerances. Effectively, this area of the UHS, which would have been within the upper thermal limit of habitable conditions for high-temperature-tolerant individuals under the current TS limit, would likely become uninhabitable under the proposed action's TS limit of ≤102 °F (38.9 °C). Therefore, high-temperature-tolerant individuals in this area that would survive under current conditions could experience thermal stress and possibly die under the proposed action.

Nonetheless, for all fish species (those with thermal tolerances above and below 95 °F [35 °C]), the discharge canal, flow path between the discharge canal and the UHS, and the UHS itself is a small portion of the cooling pond. Therefore, while an incremental increase of the UHS to ≤102 °F (38.9 °C) would likely increase the area over which cooling pond temperatures would rise, the majority of the cooling pond would remain at tolerable temperatures, and individuals would be able to seek refuge in those cooler areas. Therefore, only fish within or near the discharge canal, within the flow path between the discharge canal and UHS, or within the UHS itself at the time of elevated temperatures, would likely be affected, and fish would experience such effects to lessening degrees over the thermal gradient that extends from the discharge canal. This would result in no significant difference in the number of fish killed per high temperature event resulting from the proposed action when compared to current operations for those species with thermal tolerances at or near 95 °F (35 °C) and an insignificant increase in the number of individuals affected for species with thermal tolerances above 95 °F (35 °C), such as bluegill. Additionally, the cooling pond is a managed ecosystem in which fish stocking, fishing pressure, and predator-prey relationships constitute the primary population pressures. Fish populations affected by fish kills generally recover quickly, and therefore, fish kills do not appear to significantly influence the fish community structure. This is demonstrated by the fact that the species that are most often affected by high temperature events (threadfin shad and gizzard shad) are also among the most abundant species in the cooling pond. Managed species would continue to be assessed and stocked by the IDNR on an annual basis in accordance with the lease agreement between Exelon and IDNR. Continued stocking would mitigate any minor effects resulting from the proposed action. Accordingly, the NRC staff concludes that the proposed action would not result in significant impacts to aquatic resources in the cooling pond.

Some terrestrial species, such as birds or other wildlife, rely on fish or other aquatic resources from the cooling pond as a source of food. The NRC staff does not expect any significant impacts to birds or other wildlife because, if a fish kill occurs, the number of dead fish would be a small proportion of the total population of fish in the cooling pond. Furthermore, during fish kills, birds and other wildlife could consume many of the floating, dead fish. Additionally and as described previously, the NRC staff does not expect that the proposed action would result in a significant difference in the number or intensity of fish kill events.

With regard to water resources and ecological resources along and within the Kankakee River, the Illinois Environmental Protection Agency (IEPA) imposes regulatory controls on Braidwood's thermal effluent through Title 35, *Environmental Protection,* Section 302, "Water Quality Standards," of the Illinois Administrative Code (35 IAC 302) and through the National Pollutant Discharge Elimination System (NPDES) permitting process pursuant to the Clean Water Act. Section 302 of the Illinois Administrative Code stipulates that "[t]he maximum temperature rise shall not exceed 2.8 °C (5 °F) above natural receiving water body temperatures," (35 IAC 302.211(d)) and that "[w]ater temperature at representative locations in the main river shall at no time exceed 33.7 °C (93 °F) from April through November and 17.7 °C (63 °F) in other months" (35 IAC 302.211(e)). Additional stipulations pertaining to the mixing zone further protect water resources and biota from thermal effluents. Special Condition 4 of Braidwood NPDES permit no. IL0048321 mirrors these temperature requirements and also requires that water temperature at the edge of the mixing zone not exceed 60 °F (15.6 °C) from December through March during more than 1 percent of the hours in a 12-month period and that at no time shall the water temperature at such locations exceed the maximum limits by more than 3 °F (1.6 °C) (*i.e.,* 63 °F [17.2 °C]). Under the proposed action, Braidwood thermal effluent would continue to be limited by the Illinois Administrative Code and the Braidwood NPDES permit to ensure that Braidwood operations do not create adverse effects on water resources or ecological resources along or within the Kankakee River. In the past 5 years, Exelon applied for and the IEPA granted one provisional variance to allow higher-than-permitted temperatures at the edge of the discharge mixing zone caused by a period of extremely warm weather and little to no precipitation. Exelon reported no fish kills or other events to the IEPA or the NRC that would indicate adverse environmental effects resulting from the provisional variance. The details of this provisional variance are described in Section 4.7.1.3 of the Braidwood FSEIS. Under the proposed action, Exelon would remain subject to these Federal and State regulatory controls. The NRC staff finds it reasonable to assume that Exelon's continued compliance with, and the State's continued enforcement of, the Illinois Administrative Code and the Braidwood NPDES permit would ensure that Kankakee River water resources and ecological resources are protected. Further, the proposed action would not alter the types or amount of effluents being discharged to the river as blowdown. Therefore, the NRC staff does not expect any significant impacts to water resources or ecological resources within and along the Kankakee River as a result of raising the maximum allowable UHS temperature limit.

During its license renewal environmental review, the NRC staff consulted with the U.S. Fish and Wildlife Service (FWS) pursuant to section 7 of the Endangered Species Act concerning Federally-listed species. During that consultation, the NRC found that the sheepnose (*Plethobasus cyphyus*) and snuffbox (*Epioblasma triquetra*) mussels, northern long-eared bat (*Myotis septentrionalis*), and eastern massasauga (*Sistrurus catenatus*) had the potential to occur in the areas that would be directly or indirectly affected by license renewal (*i.e.*, the action area). In September 2015, Exelon transmitted to the NRC and the FWS the results of a mussel survey, which documented the absence of Federally-listed mussels near the Braidwood discharge site in the Kankakee River. Based on this survey and other information described in the Braidwood FSEIS, the NRC concluded that the license renewal may affect, but is not likely to adversely affect the sheepnose mussel. For the remaining species, the NRC determined that license renewal would have no effect on the snuffbox, northern long-eared bat, and eastern massasauga. The FWS concurred with the NRC's "not likely to adversely affect" determination in a letter dated October 20, 2015. The results of the consultation are further summarized in the January 27, 2016, Record of Decision for Braidwood license renewal. As previously described, the proposed increase in the allowable UHS temperature limit would not affect water resources or ecological resources along and within the Kankakee River. The proposed action would also not result in any disturbance or other impacts to terrestrial habitats. Because impacts would be confined to the cooling pond and no Federally-listed species or designated critical habitats have been identified within or near the cooling pond, the NRC staff concludes that the proposed action would have no effect on Federally-listed species or critical habitat. Accordingly, consultation with the FWS for the proposed action is not necessary because Federal agencies are not required to consult with the FWS if the agency determines that an action will have no effect on listed species or critical habitat as stated in the U.S. Fish and Wildlife Service Endangered Species Consultations: Frequently Asked Questions, dated July 15, 2013.

The NRC staff has identified no foreseeable land use, visual resource, noise, or waste management impacts given that the proposed action would not result in any physical changes to Braidwood facilities or equipment or changes any land uses on or off site. The NRC staff has identified no air quality impacts given that the proposed action would not result in air emissions beyond what would be experienced during current operations. Additionally, there would be no socioeconomic, environmental justice, or historic and cultural resource impacts associated with the proposed action since no physical change would occur beyond the site boundaries and any impacts would be limited to the cooling pond.

Based on the foregoing analysis, the NRC staff concludes that the proposed action would have no significant environmental impacts.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC considered denial of the proposed amendments (*i.e.*, the "no-action" alternative). Denial of the proposed amendments would result in no change in current environmental conditions and impacts at Braidwood.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in NUREG–1437, Supplement 55, Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Braidwood Station, Units 1 and 2—Final Report.

Agencies and Persons Consulted

The staff did not enter into consultation with any other Federal agency or with the State of Illinois regarding the environmental impact of the proposed action. However, on May 11, 2016, the NRC notified the Illinois State official, Mr. Alwyn C. Settles, Nuclear Facility Section Head, of the Bureau of Nuclear Facility Safety of the proposed amendments. The State official had no comments.

III. Finding of No Significant Impact

The NRC is considering issuing amendments for Renewed Facility Operating License Nos. NPF–72 and NPF–77, issued to Exelon for operation of Braidwood to increase the allowable TS 3.7.9.2 temperature limit of the cooling water supplied to the plant from the UHS from ≤100 °F (38.9 °C) to ≤102 °F (38.9 °C).

On the basis of the EA included in Section II above and incorporated by reference in this finding, the NRC concludes that the proposed action would not have significant effects on the quality of the human environment. The NRC's evaluation considered information provided in the licensee's application and associated supplements as well as the NRC's independent review of other relevant environmental documents. Section IV below lists the environmental documents related to the proposed action and includes information on the availability of these documents. Based on its findings, the NRC has decided not to prepare an environmental impact statement for the proposed action.

IV. Availability of Documents

The following table identifies the documents cited in this document and related to the NRC's FONSI. These documents are available for public inspection online through ADAMS at *http://www.nrc.gov/reading-rm/adams.html* or in person at the NRC's PDR as previously described.

Document	ADAMS Accession No.
License Amendment Request and Associated Supplements	
Exelon Generation Company, LLC Request for a License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, "Ultimate Heat Sink." Dated August 19, 2014.	ML14231A902
Exelon Generation Company, LLC Supplemental Information in Support of Request for a License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, "Ultimate Heat Sink." Dated January 20, 2015.	ML15020A246
Exelon Generation Company, LLC Response to Request for Additional Information Regarding Request for a License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, "Ultimate Heat Sink." Dated March 31, 2015.	ML15090A604
Exelon Generation Company, LLC Response to Request for Additional Information Regarding Request for a License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, "Ultimate Heat Sink." Dated April 30, 2015.	ML15120A396
Exelon Generation Company, LLC Supplemental Information in Support of Request for a License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, "Ultimate Heat Sink." Dated August 24, 2015.	ML15236A144
Exelon Generation Company, LLC Response to Request for Additional Information Regarding Request for a License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, "Ultimate Heat Sink." Dated October 9, 2015.	ML15282A345
Exelon Generation Company, LLC Response to Request for Additional Information Regarding Request for a License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, "Ultimate Heat Sink." Dated October 30, 2015.	ML15303A326
Exelon Generation Company, LLC Response to Request for Additional Information Regarding Request for a License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, "Ultimate Heat Sink." Dated November 9, 2015.	ML15313A254
Exelon Generation Company, LLC Response to Request for Additional Information Regarding Request for a License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, "Ultimate Heat Sink." Dated December 16, 2015.	ML15364A369
Exelon Generation Company, LLC Supplemental Information in Support of Request for a License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, "Ultimate Heat Sink." Dated February 12, 2016.	ML16043A496
Exelon Generation Company, LLC Response to Request for Additional Information Regarding Request for a License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, "Ultimate Heat Sink." Dated April 29, 2016.	ML16123A014
Exelon Generation Company, LLC Supplemental Information Regarding Request for a License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, "Ultimate Heat Sink." Dated June 17, 2016.	ML16169A139
Other Referenced Documents	
Cairns J. 1956. Effects of heat on fish. *Industrial Wastes*, 1:180–183	n/a (1)
Banner A, Van Arman JA. 1973. Thermal effects on eggs, larvae and juveniles of bluegill sunfish. Washington, DC: U.S. Environmental Protection Agency. EPA–R3–73–041.	n/a (1)
Ecological Specialists, Inc. Final Report: Five Year Post-Construction Monitoring of the Unionid Community Near the Braidwood Station Kankakee River Discharge. Dated September 2015.	ML15274A087
Exelon Generation Company, LLC Request for Enforcement Discretion for Technical Specification 3.7.9, "Ultimate Heat Sink." Dated July 10, 2012.	ML12192A637
Exelon Generation Company, LLC Licensee Event Report 2012–004–01—Notice of Enforcement Discretion Received for Ultimate Heat Sink Temperature Exceeding Technical Specifications Requirements Due to Prolonged Hot Weather. Dated September 5, 2012.	ML12249A256
Exelon Generation Company, LLC Licensee Event Report 2012–004–01—Notice of Enforcement Discretion Received for Ultimate Heat Sink Temperature Exceeding Technical Specifications Requirements Due to Prolonged Hot Weather. Dated December 13, 2012.	ML12349A174
Exelon Generation Company, LLC Byron and Braidwood Stations, Units 1 and 2, License Renewal Application, Braidwood Station Applicant's Environmental Report, Responses to Requests for Additional Information, Environmental RAIs AQ–11 to AQ–15. Dated April 30, 2014.	ML14339A044
Exelon Generation Company, LLC Braidwood, Units 1 and 2—Transmittal of Report Titled "Five Year Post-Construction Monitoring of the Unionid Community Near the Braidwood Station Kankakee River Discharge Location." Dated September 2015.	ML15274A093
Illinois Environmental Protection Agency Exelon Generation Company, LLC—Braidwood Station, Units 1 and 2, National Pollutant Discharge Elimination System (NPDES) Permit No. IL0048321. Issued on July 31, 2014	ML14227A712
U.S. Fish and Wildlife Service Endangered Species Consultations: Frequently Asked Questions. Dated July 15, 2013.	ML16120A505
U.S. Fish and Wildlife Service Concurrence Letter Concluding Informal Consultation with the NRC for Braidwood License Renewal. Dated October 20, 2015.	ML15299A013
U.S. Nuclear Regulatory Commission Notice of Enforcement Discretion for Exelon Generation Company, LLC, Regarding Braidwood Station. Dated July 12, 2012.	ML12194A681
U.S. Nuclear Regulatory Commission Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Braidwood Plant, Units 1 and 2—Final Report (NUREG–1437, Supplement 55). Dated November 30, 2015.	ML15314A814

Document	ADAMS Accession No.
U.S. Nuclear Regulatory Commission Exelon Generation Company, LLC; Docket No. STN 50–456; Braidwood Station, Unit 1 Renewed Facility Operating License. Issued on January 27, 2016	ML053040362
U.S. Nuclear Regulatory Commission Exelon Generation Company, LLC; Docket No. STN 50–457; Braidwood Station, Unit 2 Renewed Facility Operating License. Issued on January 27, 2016.	ML053040366
U.S. Nuclear Regulatory Commission Record of Decision; U.S. Nuclear Regulatory Commission; Docket Nos. 50–456 and 560–457; License Renewal Application for Braidwood Station, Units 1 and 2. Dated January 27, 2016.	ML15322A317

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Dated at Rockville, Maryland, this 18th day of July 2016.

For the Nuclear Regulatory Commission.

Joel S. Wiebe,

Senior Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–17688 Filed 7–25–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0053]

Program-Specific Guidance About Possession Licenses for Manufacturing and Distribution

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; extension of comment period.

SUMMARY: On July 13, 2016, the U.S. Nuclear Regulatory Commission (NRC) solicited comments on draft NUREG–1556, Volume 12, Revision 1, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Possession Licenses for Manufacturing and Distribution." The public comment period was originally scheduled to close on August 12, 2016. The NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments.

DATES: The due date of comments requested in the document published on July 13, 2016 (81 FR 45308) is extended. Comments should be filed no later than August 26, 2016. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0053. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Anthony McMurtray, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2746; email: *Anthony.McMurtray@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0053 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0053.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft NUREG–1556, Volume 12, Revision 1, is available in ADAMS under Accession No. ML16182A163.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

The draft NUREG–1556, Volume 12, Revision 1, is also available on the NRC's public Web site on: (1) The "Consolidated Guidance About Materials Licenses (NUREG–1556)" page at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/;* and (2) the "Draft NUREG-Series Publications for Comment" page at *http://www.nrc.gov/public-involve/doc-comment.html#nuregs.*

B. Submitting Comments

Please include Docket ID NRC–2016–0053 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, you should inform these persons that they should not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission.

II. Discussion

On July 13, 2016, the NRC solicited comments on draft NUREG–1556, Volume 12, Revision 1, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About

Licenses for Manufacturing and Distribution.''

The purpose of the document published on July 13, 2016 (81 FR 45308) was to provide the public with an opportunity to review and provide comments on draft NUREG–1556, Volume 12, Revision 1. This NUREG provides guidance to current holders of possession licenses for manufacturing and distribution and to an applicant in preparing an application for such a license. The NUREG also provides the NRC with criteria for evaluating a license application. The public comment period was originally scheduled to close on August 12, 2016. The NRC has decided to extend the public comment period on this document until August 26, 2016, to allow more time for members of the public to submit their comments.

Dated at Rockville, Maryland, this 19th day of July 2016.

For the U.S. Nuclear Regulatory Commission.

Daniel S. Collins,

Director, Division of Material Safety, State, Tribal, and Rulemaking, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–17682 Filed 7–25–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* July 26, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 21, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express Contract 40 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–169, CP2016–247.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–17704 Filed 7–25–16; 8:45 am]

BILLING CODE 7710–12–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Science and Technology Council; Interagency Arctic Research Policy Committee (IARPC) Arctic Research Plan FY2017–2021

ACTION: Request for Public Comment.

SUMMARY: The Arctic Research and Policy Act of 1984 (ARPA), P.L. 98–373, established the Interagency Arctic Research Policy Committee (IARPC) to develop national Arctic research policy through five-year Federal research plans. Chaired by the Director of the National Science Foundation (NSF), IARPC is composed of representatives from 14 agencies. More information on IARPC can be found at *http://www.iarpccollaborations.org.*

IARPC seeks public comment on its new *Arctic Research Plan FY2017–2021* (Five-Year Plan). The Five-Year Plan describes research priorities that are expected to benefit from interagency collaboration; not all research conducted by Federal agencies is included in the Five-Year Plan. The Five-Year Plan and additional information, including any updates to this **Federal Register** notice, will be available at *https://review.globalchange.gov/.*

DATES: Responses must be received by August 21, 2016, 11:59 p.m. EST, to be considered.

ADDRESSES: The *Arctic Research Plan FY2017–2021* is available at *https://review.globalchange.gov/* where comments from the public will be accepted electronically. Comments must be submitted online at this address; instructions for submitting are on this Web site. The U.S. Global Change Research Program (USGCRP) hosts several documents for review. To comment on the Arctic Research Plan FY 2017–2021, please scroll through the list of available documents and select ''Arctic Research Plan FY2017–2021.''

Instructions: Responses to this Request for Information (RFI) are voluntary. All submissions must be in English. Please clearly label submissions as ''IARPC FIVE-YEAR PLAN COMMENT.'' Responses exceeding 250 words will not be considered. All comments received through this process will be considered by the relevant chapter authors without knowledge of the commenters' identities. When the final plan is issued, relevant comments and the commenters' names, along with the authors' responses, will become part of the public record and be made available at *https://review.globalchange.gov/.* The Office of Science and Technology Policy (OSTP) therefore requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Sandy Starkweather, NOAA Arctic Research Program (c/o Starkweather), 1315 East West Highway, R/CP 42nd Floor, 2820 Silver Spring, MD 20910. (telephone number: 301–427–2471 or email address: *sandy.starkweather@noaa.gov*) during normal business hours of 9 a.m. to 5 p.m. Eastern time, Monday through Friday, or visit *https://review.globalchange.gov/.*

SUPPLEMENTARY INFORMATION: The Five-Year Plan focuses on the following nine priority areas designed to enhance the goals and objectives of Federal agencies in Arctic research:

(1) Health and well-being

(2) Atmospheric composition and dynamics

(3) Sea ice cover

(4) Marine ecosystems

(5) Glaciers and the Greenland Ice Sheet

(6) Permafrost

(7) Terrestrial and freshwater ecosystems

(8) Coastal community resilience

(9) Environmental intelligence

For the purposes of research planning, IARPC follows Section 112 of the ARPA in defining the Arctic as ''all United States and foreign territory north of the Arctic Circle and all United States territory north and west of the boundary formed by the Porcupine, Yukon, and Kuskokwim Rivers [in Alaska]; all contiguous seas, including the Arctic Ocean and the Beaufort, Bering, and Chukchi Seas; and the Aleutian chain.''

OSTP anticipates that the final IARPC Arctic Research Plan FY2017–2021 will be available at *https://www.whitehouse.gov/administration/eop/ostp/nstc/committees/cenrs/iarpc* and at *www.iarpccollaborations.org.*

Ted Wackler,

Deputy Chief of Staff and Assistant Director.

[FR Doc. 2016–17326 Filed 7–25–16; 8:45 am]

BILLING CODE 3270–F6–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78369; File No. SR–BatsEDGX–2016–32]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees as They Apply to the Recently Adopted Step Up Mechanism on Its Equity Options Platform

July 20, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 11, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to EDGX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the fee schedule applicable to the Exchange's options platform ("EDGX Options") to adopt fees for its recently adopted Step Up Mechanism ("SUM").[6] SUM is a feature within the Exchange's System[7] that will provide automated order handling in designated classes for qualifying orders that are not automatically executed by the System. For order handling and responses regarding SUM, orders that are received by SUM shall be electronically exposed at the NBBO immediately upon receipt. The exposure shall be for a period of time determined by the Exchange on a class-by-class basis, which period of time shall not exceed one second. All Users will be permitted to submit responses to the exposure message during the exposure period.[8] The Exchange proposes to provide an additional rebate per contract for orders submitted by Users in response to a SUM auction, as described below.

In order to encourage Users to respond to SUM auctions, the Exchange proposes to adopt footnote 3 to the Fee Schedule, under which the Exchange would provide an additional rebate of $0.05 per contract for any order submitted in response to a SUM auction. As with all other fees and rebates on EDGX Options, this rebate would only apply to orders that are executed; and in this case, to orders that are specifically executed against orders exposed via SUM.

As noted above, all Users are permitted to submit orders in response to a SUM auction, and thus, the Exchange proposes to append footnote 3 to all fee codes on the Exchange's fee schedule other than those specific to routing away from the Exchange and the Exchange's opening process. Specifically, the additional rebate per contract for responding to and executing against an order exposed through a SUM auction would apply to fee codes: NB, NC, NF, NM, NN, NO, NP, PB, PC, PF, PM, PN, PO and PP.

The proposed rebate is an additional rebate per contract, and would therefore be applied on top of any existing fee or rebate currently provided for in the Exchange's fee schedule. For example, pursuant to fee code NB, the Exchange charges a standard fee of $0.75 per contract for Broker Dealer[9] orders in Non-Penny Pilot Securities.[10] If a User were to submit a Broker Dealer order in a Non-Penny Pilot Security in response to a SUM auction, the resulting transaction fee would be $0.70 per contract after applying the proposed $0.05 per contract rebate for SUM responses.

The additional SUM rebate would also apply in addition to any tiered pricing rate otherwise achieved by a Member. For instance, pursuant to footnote 2 of the Exchange's fee schedule, a Member's Market Maker[11] orders are eligible for reduced fees or even a rebate to the extent the Member reaches certain volume thresholds. The additional rebate per contract would apply in addition to this reduced fee or rebate (*e.g.,* Tier 1, which normally yields a decreased fee of $0.16 per contract for qualifying Members' Market Maker orders would instead yield a fee of $0.11 per contract for a SUM response; Tier 5, which normally yields a decreased fee of $0.02 per contract for qualifying Members' Market Maker orders would instead yield a rebate of $0.03 per contract for a SUM response; and so forth).

Implementation Date

The Exchange proposes to implement the proposed changes on July 11, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[12] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[13] in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

[6] *See* SR–BatsEDGX–2016–29 ("Step Up Mechanism Filing"), available at: *http://cdn.batstrading.com/resources/regulation/rule_filings/approved/2016/SR-BatsEDGX-2016-29.pdf.*

[7] *See* Exchange Rule 16.1(a)(59) (defining the term System as the automated trading system used by EDGX Options for the trading of options contracts).

[8] *See* Step Up Mechanism Filing, *supra* note 6.

[9] The term "Broker Dealer" applies to any order for the account of a broker dealer, including a foreign broker dealer, that clears in the Customer range at the OCC.

[10] The term "Non-Penny Pilot Security" applies to those issues that are not Penny Pilot Securities quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

[11] The term "Market Maker" applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is registered with the Exchange as a Market Maker as defined in Rule 16.1(a)(37).

[12] 15 U.S.C. 78f.

The Exchange believes the proposed rebate is equitable and not unfairly discriminatory because it would be equally available and objectively applied to all Members orders submitted and executed in response to SUM auctions on the Exchange. The Exchange further believes the proposed rebate is equitable and reasonable as it is an additional rebate per contract designed to encourage Members to enter orders in response to SUM auctions on the Exchange. The Exchange further believes that the rebate is reasonable because the proposed additional rebate per contract does not represent a significant departure from pricing previously offered by the Exchange or other options exchanges. Lastly, the Exchange believes the proposed rebate is not unfairly discriminatory as all Members may enter orders in response to a SUM auction and receive the proposed rebate if their order is executed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rebate would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rebate represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Rather, the Exchange believes the proposal will enhance competition as it is a competitive proposal that seeks to further the growth of the Exchange by encouraging Members to enter orders in response to SUM auctions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and paragraph (f) of Rule 19b–4 thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BatsEDGX–2016–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsEDGX–2016–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsEDGX–2016–32, and should be submitted on or before August 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17582 Filed 7–25–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78367; File No. SR–NYSEMKT–2016–49]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Withdrawal of Proposed Rule Change Amending the Definition of "Block" for Purposes of Rule 72(d)—Equities and the Size of a Proposed Cross Transaction Eligible for the Cross Function in Rule 76—Equities

July 20, 2016.

On April 22, 2016, NYSE MKT LLC ("Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to pre-opening indications and opening procedures. The proposed rule change was published for comment in the **Federal Register** on May 3, 2016.[3] The Commission received no comments on the proposed rule change. On May 31, 2016, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5]

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[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77734 (Apr. 27, 2016), 81 FR 26598.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 77951, 81 FR 36367 (June 6, 2016). The Commission designated August 1, 2016, as the date by which it should approve, disapprove, or institute

On July 18, 2016, the Exchange withdrew the proposed rule change (File No. SR–NYSEMKT–2016–49).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17573 Filed 7–25–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78372; File No. SR–NYSE–2016–50]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Rules Regarding Payment of Compensation and Rebates, and Research Analyst Attestation Requirements, Harmonizing With Certain Financial Industry Regulatory Authority, Inc. Rules and Making Other Conforming Changes

July 20, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 12, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding (1) payment of compensation and rebates, and (2) research analyst attestation requirements in order to harmonize with certain Financial Industry Regulatory Authority, Inc. ("FINRA") rules and make other conforming changes. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes amending its rules concerning (1) payment of compensation and rebates, and (2) research analyst attestation requirements in order to harmonize with certain FINRA rules and make other conforming changes. Specifically, the Exchange proposes to:

- Delete Rule 353 (Rebates and Compensation),[4] NYSE Rule Interpretation 345(a)(i)/01 (Compensation to Non-Registered Persons), NYSE Rule Interpretation 345(a)(i)/02 (Compensation Paid for Advisory Solicitations), and NYSE Rule Interpretation 345(a)(i)/03 (Compensation to Non-Registered Foreign Persons Acting as Finders), adopt the text of FINRA Rule 2040 (Payments to Unregistered Persons) (including Supplementary Material .01) and add new Supplementary Material .02, and amend Rule 8311 (Effect of a Suspension, Revocation, Cancellation, or Bar) (including adding Supplementary Material .01) in order to harmonize its rules with FINRA's rules regarding the payment of transaction-based compensation by members to unregistered persons;
- delete Rule 351 (Reporting Requirements) (including Supplementary Material .11 and .12) and amend Rules 472 (Communications With The Public) and 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d–1(c)(2)) to harmonize with FINRA's rules regarding annual attestation requirements for research analysts; and
- make certain technical and conforming changes.[5]

Background

In 2007, the Exchange and FINRA[6] entered into an agreement (the "Agreement") pursuant to Rule 17d–2 under the Act to reduce regulatory duplication by allocating to FINRA certain regulatory responsibilities for NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules").[7] In order to reduce regulatory duplication and relieve firms that are members of the Exchange and FINRA of conflicting or unnecessary regulatory burdens, FINRA has been reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[8]

Payment of Transaction-Based Compensation

As part of the rule consolidation process, in 2014, FINRA adopted FINRA Rule 2040 regarding payment of transaction-based compensation by members to unregistered persons.[9] The requirements of Incorporated NYSE Rule 353[10] as well as Incorporated

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proceedings to determine whether to disapprove the proposed rule change.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] References to rules are to NYSE rules unless otherwise indicated.

[5] As discussed below, the conforming changes the Exchange proposes would substitute the term "member organization" for "member" and the term "Exchange" for "FINRA."

[6] NYSE Regulation, Inc., a former not-for-profit subsidiary of the Exchange, was also a party to the Agreement by virtue of the fact that it performed regulatory functions for the Exchange pursuant to a delegation agreement. *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251, 11264–65 (March 6, 2006) (SR–NYSE–2005–77) (approving delegation agreement). The delegation agreement terminated on February 16, 2016, and NYSE Regulation has ceased providing regulatory services to the Exchange, which has re-integrated its regulatory functions.

[7] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as "Common Rules"). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA or the Exchange to the substance of any of the Common Rules.

[8] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[9] *See* Securities Exchange Act Release Nos. 73210 (September 25, 2014), 79 FR 59322 (October 1, 2014) (SR–FINRA–2014–037) ("FINRA Notice") and 73954 (December 30, 2014), 80 FR 553 (January 6, 2015) (SR–FINRA–2014–37) ("FINRA Approval Order").

[10] NYSE Rule 353(a) prohibits a member, principal executive, registered representative or officer from, directly or indirectly, rebating to any person any part of the compensation he receives from the solicitation of orders for the purchase or sale of securities or other similar instruments for the accounts of customers of the member, or pay such compensation, or any part thereof, as a bonus, commission, fee or other consideration for business sought or procured for him or for any other

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NYSE Rule Interpretation 345(a)(i)/01 (Compensation to Non-Registered Persons), Incorporated NYSE Rule Interpretation 345(a)(i)/02 (Compensation Paid for Advisory Solicitations), and NYSE Rule Interpretation 345(a)(i)/03 (Compensation to Non-Registered Foreign Persons Acting as Finders)[11] were consolidated into the new FINRA rule, and FINRA deleted Incorporated NYSE Rule 353 and the Incorporated NYSE Rule 345 interpretations.[12]

In the same filing, FINRA amended FINRA Rule 8311 to eliminate duplicative provisions in NASD IM–2420–2 (Continuing Commissions Policy)[13] and clarify the scope of the rule on payments by members to persons subject to suspension, revocation, cancellation, bar or other disqualification and added new Supplementary Material .01 (Remuneration Accrued Prior to Effective Date of Sanction or Disqualification) expressly permitting a member to pay to any person subject to a sanction or disqualification any remuneration pursuant to an insurance or medical plan, indemnity agreement relating to legal fees, or as required by an arbitration award or court judgment.[14]

Research Analyst Attestation Requirements

In 2011, the Exchange adopted FINRA Rule 4530 (Reporting Requirements) as NYSE Rule 4530. FINRA Rule 4530 was modeled in part on former NYSE Rule 351(a)-(d), which governed trade investigation reporting requirements.[15] The Exchange retained Rule 351(f), which requires a letter of attestation signed by a principal executive that the member or member organization has established and implemented procedures reasonably designed to comply with the provisions of Rule 472, that each research analyst's compensation was reviewed and approved in accordance with the requirements of Rule 472(h)(2), and that the basis for such approval has been documented. At the time, the Exchange noted that NYSE Rules 351(f), 351.11 and 351.12 governing the annual attestation requirement would be addressed as part of the research analyst conflict of interest rules.[16]

In 2015, FINRA adopted FINRA Rule 2241 (Research Analysts and Research Reports), which deleted the requirement to attest annually that the firm has in place written supervisory policies and procedures reasonably designed to achieve compliance with the applicable provisions of the rules, including the compensation committee review provision.[17] As FINRA explained in its filing, firms were already obligated pursuant to NASD Rule 3010 (Supervision) to have a supervisory system reasonably designed to achieve compliance with all applicable securities laws and regulations and FINRA rules. Moreover, the research rules also were subject to the supervisory control rules (NASD Rule 3012) and the annual certification requirement regarding compliance and supervisory processes embodied in FINRA Rule 3130. As such, FINRA did not believe that a separate attestation requirement for the research rules was necessary.[18]

The attestation requirement in current Rule 351(f) is inconsistent with FINRA Rule 2241, thereby presenting member organizations that are also FINRA members with inconsistent requirements. Moreover, the Exchange has adopted FINRA Rules 3110, 3120 and 3130 as NYSE Rules 3110, 3120 and 3130.[19] Exchange member organizations are therefore subject to the same supervisory requirements as FINRA member firms, including the annual certification requirement regarding compliance and supervisory processes in Rule 3130.

Proposed Rule Changes

Payment of Transaction-Based Compensation

Deletion of Rule 353 and Rule 345 Interpretations, and Adoption of FINRA Rule 2040

In light of FINRA's adoption of a comprehensive rule regarding the payment of transaction-based compensation, the Exchange proposes to adopt the text of FINRA Rule 2040 as NYSE Rule 2040 and delete Rule 353, the Exchange's current rule governing rebates and compensation, as well as NYSE Rule Interpretations 345(a)(i)/01, 345(a)(i)/02, and 345(a)(i)/03, which relate to compensation to non-registered persons, compensation paid for advisory solicitations, and compensation to non-registered foreign persons acting as finders, respectively. As noted above, the requirements of NYSE Rule 353 and the NYSE Rule Interpretations 345(a)(i)/01, 345(a)(i)/02, and 345(a)(i)/03 have been consolidated into the FINRA rule, making them redundant.[20] For consistency with Exchange rules, the Exchange proposes to: (1) Change references to "members" in the text of FINRA Rule 2040 (including Supplementary Material .01) to "member organizations"; (2) change references to "FINRA" in the text of FINRA Rule 2040 (including Supplementary Material .01) to "the Exchange"; and (3) change the reference in Rule 2040(c)(1) to "disqualification as defined in Article III, Section 4 of FINRA's By-Laws" to "statutory disqualification as defined in Section

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member. NYSE Rule 353(b) further provides that a member, principal executive, registered representative or officer cannot be compensated for business done by or through his employer after the termination of his employment except as may be permitted by the NYSE.

[11] NYSE Rule Interpretation 345(a)(i)/01 (Compensation to Non-Registered Persons) prohibits member organizations from paying to nonregistered persons compensation based upon the business of customers they direct to the member organization if such compensation is, among other things, formulated as a direct percentage of commissions generated and is other than on an isolated basis. NYSE Rule Interpretation 345(a)(i)/02 (Compensation Paid for Advisory Solicitations) provides that a member organization that is also registered with the Commission as an investment adviser may enter into arrangements that comply with Rule 206(4)–3 (Cash Payments for Client Solicitations) of the Investment Advisers Act. Finally, NYSE Rule Interpretation 345(a)(i)/03 (Compensation to Non-Registered Foreign Persons Acting as Finders) provides that member organizations may pay transaction-related compensation to nonregistered foreign finders, based upon the business of customers such persons direct to members, subject to identified conditions.

[12] *See* FINRA Approval Order, 80 FR at 555 & 557; *see also* FINRA Notice, 79 FR at 59327. The result was "one concise rule that outlines the applicable requirements for payments to non-members." FINRA Approval Order, 80 FR at 557.

[13] NASD IM–2420–2 allows members to pay continuing commissions to former registered representatives after they cease to be employed by a member, if, among other things, a bona fide contract between the member and the registered representative calling for the payments was entered into in good faith while the person was a registered representative of the employing member. *See* FINRA Notice, 79 FR at 59326. Rule 353(b), on the other hand, provides that a member, principal executive, registered representative or officer cannot be compensated for business done by or through his employer after the termination of his employment except as may be permitted by the NYSE.

[14] FINRA Approval Order, 80 FR at 556–57.

[15] *See* Securities Exchange Act Release No. 64785 (June 30, 2011), 76 FR 39946 (July 7, 2011) (SR–NYSE–2011–27).

[16] *See id.* at 39946, n.8.

[17] *See* Securities Exchange Act Release No. 75471 (July 16, 2015), 80 FR 43482, 43488 (July 22, 2015) (SR–FINRA–2014–047).

[18] *See id.* NASD Rules 3010 and 3012 referred to in the approval order were adopted with changes as FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System). *See id.*, n. 83; Securities Exchange Act Release No. 71179 (December 23, 2013), 78 FR 79542 (December 30, 2013) (SR–FINRA–2013–025).

[19] *See* Securities Exchange Act Release No. 73554 (November 6, 2014), 79 FR 67508 (November 13, 2014) (SR–NYSE–2014–56) (adopting FINRA Rules 3110 and 3120); Securities Exchange Act Release No. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR–NYSE–2009–25) (adopting FINRA Rule 3130).

[20] *See* FINRA Approval Order, 80 FR at 555 & 557. *See also* notes 10–12 and accompanying text, *supra*. There are no associated Rule 353 interpretations.

3(a)(39) of the Securities Exchange Act of 1934." In addition, in order to ensure that proposed Rule 2040 and FINRA Rule 2040 are fully harmonized, the Exchange also proposes to add Supplementary Material .02 to proposed Rule 2040 to provide that, for purposes of the rule, the term "associated person" shall have the same meaning as the terms "person associated with a member" or "associated person of a member" as defined in Article I (rr) of the FINRA ByLaws. The proposed Rule is otherwise the same as its FINRA counterpart.

Amendment to Rule 8311 To Reflect Recent Amendments to FINRA Rule 8311

To reflect FINRA's recent amendments to FINRA Rule 8311, the Exchange proposes certain amendments to NYSE Rule 8311 to fully harmonize the two rules. First, the Exchange proposes to delete the word "or" in the heading and add the phrase "or Other Disqualification." The first paragraph would be become subsection (a) and the text would be harmonized with FINRA Rule 8311(a).

Proposed Rule 8311(a) would clarify the scope of payments by member organizations to persons subject to suspension, revocation, cancellation, bar (each a "sanction") or other disqualification and would provide that if a person is subject to a sanction or other disqualification, a member organization may not allow such person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity. Proposed Rule 8311(a) would further provide that a member organization may not pay or credit to any person subject to a sanction or disqualification, during the period of the sanction or disqualification or any period thereafter, any salary, commission, profit, or any other remuneration that the person might accrue, not just earn, during the period of the sanction or disqualification. The Exchange also proposes to add a new sentence to proposed Rule 8311(a) providing that a member organization may make payments or credits to a person subject to a sanction that are consistent with the scope of activities permitted under the sanction where the sanction solely limits an associated person from conducting specified activities (such as a suspension from acting in a principal capacity) or to a disqualified person that has been approved (or is otherwise permitted pursuant to Exchange rules and the federal securities laws) to associate with a member organization.

Further, the Exchange proposes to add a new subsection (b) and new proposed Supplementary Material .01 that, with the exception of conforming references to "members" in the text of FINRA Rule 8311 to "member organizations" and references to "FINRA" to "the Exchange," would be identical to the recent amendments to FINRA Rule 8311.

The Exchange believes that the proposed Rule complements proposed Rule 2040 and would harmonize the Exchange's rules on payments by member organizations to persons subject to suspension, revocation, cancellation, bar or other disqualification.

Research Analyst Attestation Requirements

Deletion of NYSE Rule 351(f) and Supplementary Material .11 and .12

In light of FINRA's elimination of an annual attestation requirement when it adopted FINRA Rule 2241,[21] the Exchange proposes to delete NYSE Rule 351(f) and Supplementary Material .11 and .12, thereby eliminating inconsistent requirements for member organizations that are also FINRA members.[22] As noted above, Exchange member organizations are also subject to the same supervisory requirements as FINRA member firms, including the annual certification requirement regarding compliance and supervisory processes in Rule 3130.

The Exchange proposes to mark the entire Rule as "Reserved" and delete headings (a) through (e) and Supplementary Material .10 and .13, which have no content and are marked "Reserved" and "Deleted," respectively.

Conforming Changes

The Exchange proposes the following conforming changes. First, the Exchange would substitute the term "member organization" for "member"[23] and the term "Exchange" for "FINRA" in proposed Rule 2040 and in the changes proposed for Rule 8311. Second, the Exchange would delete references to Rule 351 in Rules 472(c) and (h), governing communications with the public, and 9217, which sets forth the rules included in the NYSE's minor rule violation plan.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[24] in general, and Section 6(b)(5) of the Act,[25] in particular, because the proposed rule changes would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, adopting proposed Rule 2040 and amending Rule 8311 based on FINRA Rules 2040 and 8311 as well as deleting Rule 353 and NYSE Rule Interpretations 345(a)(i)/01, 345(a)(i)/02, and 345(a)(i)/03 would promote just and equitable principles of trade by providing greater harmonization between NYSE Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance.

Similarly, deleting Rule 351(f) and Supplementary Material .11 and .12 as inconsistent with FINRA Rule 2241 would eliminate inconsistent annual attestation requirements, resulting in less burdensome and more efficient regulatory compliance and promoting just and equitable principles of trade. The Exchange further believes that eliminating the annual attestation requirement would not be inconsistent with the Exchange's obligations under the Exchange Act to prevent fraudulent or manipulative acts and practices because Exchange member organizations are subject to the same supervisory requirements as FINRA member firms, including an annual certification requirement regarding compliance and supervisory processes set forth in Rule 3130. To the extent the Exchange has proposed changes that differ from the FINRA version of the Exchange rules, such changes are generally technical in nature and do not change the substance of the proposed rules. The Exchange also believes that the proposed conforming changes will update and add specificity to the Exchange's rules, which will promote just and equitable principles of trade and help to protect investors.

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[21] *See* 80 FR at 43488.

[22] The Exchange has not adopted FINRA Rule 2241. Under Rule 2(b)(i), member organizations that transact business with public customers must at all times be members of FINRA and, as such, would be subject to FINRA's rules, including the requirements of Rule 2241.

[23] The term "member" has different meanings under FINRA and Exchange rules. Under FINRA Rule 0160(b)(10), a "member" means an individual, partnership, corporation or other legal entity admitted to membership in FINRA under Articles III and IV of the FINRA By-Laws. Article III, Sec. 1(a) generally limits membership to registered brokers, dealers, municipal securities brokers or dealers, or government securities brokers or dealers. NYSE's equivalent term is "member organization." *See* Rule 2(b)(i) (defining "member organization" as a registered broker or dealer (unless exempt pursuant to the Act) that is a member of FINRA or another registered securities exchange). Under NYSE Rule 2(a), the term "member" means a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the floor of the Exchange or any facility thereof.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[26] the Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are not intended to address competitive issues but rather to achieve greater transparency and consistency between the Exchange's rules and FINRA's requirements concerning payments to unregistered persons, the effect of suspensions, revocations, cancellations, bars or other disqualifications, and research analyst annual attestation requirements.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[27] and Rule 19b–4(f)(6) thereunder.[28] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[29] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[30] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[31] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–50 and should be submitted on or before August 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17584 Filed 7–25–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78375; File No. SR–BX–2016–034]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Affiliated Entities

July 20, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 8, 2016, NASDAQ BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[26] 15 U.S.C. 78f(b)(8).

[27] 15 U.S.C. 78s(b)(3)(A)(iii).

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6).

[30] 17 CFR 240.19b–4(f)(6)(iii).

[31] 15 U.S.C. 78s(b)(2)(B).

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at chapter XV to permit certain affiliated market participants to aggregate eligible volume to all pricing in chapter XV, section 2(1) for which a volume threshold or volume percentage is required to obtain the pricing.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqbx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit certain affiliated market participants to aggregate volume in chapter XV, section 2(1) for which a volume threshold or volume percentage is required to obtain the pricing and qualify for various pricing incentives. The Exchange's proposal is intended to incentivize Participants to submit for execution a greater amount of order flow on BX to obtain more advantageous pricing.

Affiliated Entity

The Exchange proposes to add three definitions to chapter XV of BX Options Rules. The Exchange proposes to define the terms "Appointed MM," "Appointed OFP" and "Affiliated Entity." The Exchange proposes to define the term "Appointed MM" as a BX Options Market Maker[3] who has been appointed by an Order Flow Provider ("OFP") for purposes of qualifying as an Affiliated Entity. An OFP means is a Participant that submits orders, as agent or principal, to the Exchange.[4] The Exchange proposes to define the term "Appointed OFP" as an OFP who has been appointed by a BX Options Market Maker for purposes of qualifying as an Affiliated Entity. The Exchange proposes to define the term "Affiliated Entity" as a relationship between an Appointed MM and an Appointed OFP for purposes of aggregating eligible volume for pricing in chapter XV, section 2(1) for which a volume threshold or volume percentage is required to qualify for higher rebates or lower fees. In order to become an Affiliated Entity, BX Options Market Makers and OFPs will be required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month.[5] For example, with this proposal, market participants may submit emails to the Exchange to become Affiliated Entities eligible to qualify for discounted pricing starting August 1, 2016, provided the emails are sent at least 3 business days prior to the first business day of August 2016. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing in chapter XV, section 2(1). Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will terminate after a one (1) year period, unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Entity relationships must be renewed annually. For example, if the start date of the Affiliated Entity relationship is August 1, 2016, the counterparties may determine to commence a new relationship as of August 1, 2017 by sending two new emails by July 27, 2017 (3 business days prior to the end of the month). Participants under Common Ownership[6] may not qualify as a counterparty comprising an Affiliated Entity. Each Participant may qualify for only one (1) Affiliated Entity relationship at any given time.

As proposed, an Affiliated Entity shall be eligible to aggregate their volume for purposes of qualifying for certain pricing in chapter XV, section 2(1) for which a volume threshold or volume percentage is required to obtain a higher rebate or lower fee. With this proposal, Affiliated Entities will be eligible to tier pricing in section 2(1) in both Penny and Non-Penny Pilot Options.[7]

Chapter XV, Section 2(1)—Penny Pilot and Non-Penny Pilot Options Pricing

Currently, the Exchange offers Customers,[8] when trading with Non-Customers,[9] BX Options Market Makers or Firms[10] the ability to obtain higher Penny Pilot Options Rebates to Add Liquidity in Penny Pilot Options Tiers Schedule which exclude Select Symbols ("non-Select Symbols") with a tiered pricing model.[11] Also, the Exchange offers Customers, when trading with Customers, Non-Customers, BX Options Market Makers or Firms the ability to obtain higher Penny Pilot Options Rebates to Remove Liquidity in non-Select Symbols with a tiered pricing model.[12] Finally, the Exchange offers BX Options Market Makers, when trading with Customers the ability to obtain lower Penny Pilot Options Fees to Remove Liquidity in non-Select Symbols with a tiered pricing model.[13] This pricing is reflected at chapter XV, section 2(1) and would be subject to aggregation by Affiliated Entities.

The Exchange offers Customers, when trading with Non-Customers, BX

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[3] The term "BX Options Market Maker" or ("M") is a Participant that has registered as a Market Maker on BX Options pursuant to chapter VII, Section 2, and must also remain in good standing pursuant to chapter VII, section 4. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security.

[4] Market Makers submitting quotes to the Exchange shall not be considered Appointed OFPs for the purpose of becoming an Affiliated Entity.

[5] The Exchange shall issue an Options Trader Alert specifying the email address and details required to apply to become an Affiliated Entity. Once the Exchange receives both emails, from the Affiliated [sic] MM and the Affiliated [sic] OFP, the Exchange will send a confirming email with the date of approval of the one (1) year term.

[6] The term "Common Ownership" means Participants under 75% common ownership or control. *See* chapter XV. Participants that are under 75% common ownership or control shall be considered under Common Ownership for purposes of pricing.

[7] *See* BX Rules at Section 2(1) of chapter XV.

[8] The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in chapter I, section 1(a)(48)).

[9] A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker.

[10] The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at The Options Clearing Corporation.

[11] The Penny Pilot Options Rebates to Add Liquidity in non-Select Symbols ranges from $0.00 to $0.20 per contract.

[12] The Penny Pilot Options Rebates to Remove Liquidity in non-Select Symbols ranges from $0.00 to $0.35 per contract.

[13] Penny Pilot Options Fees to Remove Liquidity in non-Select Symbols ranges from $0.30 to $0.39 per contract.

Options Market Makers or Firms, the ability to obtain higher Penny Pilot Options Rebates to Add Liquidity in Select Symbols [14] with a tiered pricing model.[15] The Exchange offers BX Options Market Makers, when trading with Customers, the ability to obtain a lower Penny Pilot Options Fees to Add Liquidity in Select Symbols with a tiered pricing model.[16] The Exchange offers Customers, when trading with Non-Customers, BX Options Market Makers, Customers or Firms, the ability to obtain higher Penny Pilot Options Rebates to Remove Liquidity in Select Symbols with a tiered pricing model.[17] The Exchange offers BX Options Market Makers, when trading with Customers, the ability to obtain a lower Penny Pilot Options Fees to Remove Liquidity in Select Symbols with a tiered pricing model.[18] Finally, the Exchange offers BX Options Market Makers, when trading with Non-Customers, BX Options Market Makers or Firms, the ability to obtain lower Fees to Add Liquidity in Select Symbols with a tiered pricing model.[19] This pricing is reflected at chapter XV, section 2(1) and would be subject to aggregation by Affiliated Entities.

Currently, the Exchange offers Customers, when trading with Non-Customers, BX Options Market Makers or Firms, the ability to obtain higher Non-Penny Pilot Options Rebates to Add Liquidity with a tiered pricing model.[20] Also, the Exchange offers BX Options Market Makers, when trading with Customers, the ability to obtain lower Non-Penny Pilot Options Fees to Remove Liquidity with a tiered pricing model.[21] This pricing is reflected at chapter XV, section 2(1) and would be subject to aggregation by Affiliated Entities.

The pricing noted herein demonstrates instances where the tiered pricing would provide a higher rebate or lower fee. In those cases where the pricing is the same for all tiers, the aggregation would not yield a higher rebate or lower fee.

Currently, the Exchange also offers Customers, when trading with Non-Customers, BX Options Market Makers, Customers or Firms, the ability to obtain higher Rebates to Remove Liquidity in SPY Options in a tiered pricing model.[22] This pricing is reflected at chapter XV, section 2(1) and would be subject to aggregation by Affiliated Entities.

The Exchange's proposal would incentivize certain Participants, who are not by definition under Common Ownership, to enter into an Affiliated Entity relationship for the purpose of aggregating Customer volume to qualify for reduced Penny Pilot Options and non-Penny Pilot Options fees and higher Penny Pilot Options and non-Penny Pilot Options rebates. With respect to the pricing and the Affiliated Entity relationship, Appointed MMs would receive lower fees and Appointed OFPs would receive higher rebates, as applicable with this aggregated pricing.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with section 6(b) of the Act,[23] in general, and furthers the objectives of section 6(b)(4) and (b)(5) of the Act,[24] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies." [25]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [26] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[27] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost." [28]

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ." [29] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange's proposal to amend chapter XV, section 2 to add the definitions of "Appointed MM," "Appointed OFP" and "Affiliated Entity" is reasonable because the Exchange is proposing to identify the applicable market participants that may qualify to aggregate volume as an Affiliated Entity. Further the Exchange seeks to make clear the manner in which Participants may participate on the Exchange as Affiliated Entities by setting timeframes for communicating agreements among market participants and terms of early termination. The Exchange also clearly states that no Participant under Common Ownership may become a counterparty to an Affiliated Entity. Any Participant who meets the definition of Common Ownership shall not be eligible to become an Affiliated Entity. The Exchange believes that these terms are reasonable because they would allow

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[14] The Select Symbols are: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT. *See* BX chapter XV, section 2(1) pricing.

[15] Penny Pilot Options Rebates to Add Liquidity in Select Symbols ranges from $0.00 to $0.25 per contract.

[16] Penny Pilot Options Fees to Add Liquidity in Select Symbols ranges from $0.29 to $0.44 per contract.

[17] Penny Pilot Options Rebates to Remove Liquidity in Select Symbols ranges from $0.00 to $0.37 per contract.

[18] Penny Pilot Options Fees to Remove Liquidity in Select Symbols ranges from $0.25 to $0.42 per contract.

[19] Penny Pilot Options Fees to Add Liquidity in Select Symbols ranges from $0.00 to $0.14 per contract.

[20] Non-Penny Pilot Options Rebates to Add Liquidity ranges from $0.00 to $0.20 per contract.

[21] Non-Penny Pilot Options Fees to Remove Liquidity ranges from $0.60 to $0.89 per contract.

[22] The SPY rebate ranges from $0.10 to $0.51 per contract.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(4), (5).

[25] Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7–10–04) ("Regulation NMS Adopting Release").

[26] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[27] *See id.* at 534–535.

[28] *See id.* at 537.

[29] *See id.* at 539 (quoting Securities Exchange Act Commission at Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782–74783 (December 9, 2008) (SR–NYSEArca–2006–21)).

Participants to elect to become a counterparty to an Affiliated Entity, provided they are not under Common Ownership.

The Exchange's proposal to amend chapter XV, section 2 to add the definitions of "Appointed MM," "Appointed OFP" and "Affiliated Entity" is equitable and not unreasonably discriminatory because all Participants that are not under Common Ownership by definition may choose to enter into an Affiliated Entity relationship.

Chapter XV, Section 2(1)—Penny Pilot and Non-Penny Pilot Options Pricing

The Exchange's proposal to permit Affiliated Entities to aggregate volume for purposes of qualifying Appointed OFPs for higher Penny Pilot and Non-Penny Pilot Options, including SPY, rebates[30] and qualifying Appointed MMs for lower fees[31] is reasonable because it will attract additional Customer and non-Customer order flow to the Exchange. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts BX Options Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Also, the Exchange is incentivizing Participants to send non-Customer order flow to BX, which order flow will benefit all Participants because they may interact with the liquidity. Market participants directing order flow as OFPs may be eligible to qualify for higher rebates with this proposal as a result of aggregating volume with an Appointed MM and thereby qualifying for higher rebates. Permitting Participants to affiliate for purposes of qualifying Appointed OFPs for higher rebates and qualifying Appointed MMs for lower fees may also encourage Affiliated Entities to incentivize each other to attract and seek to execute more volume on BX. In turn, market participants would benefit from the increased liquidity with which to interact and potentially tighter spreads on orders. Overall, incentivizing market participants with increased opportunities to earn higher rebates or lower fees may increase the quality of the liquidity available on BX.

The Exchange's proposal to permit Affiliated Entities to aggregate volume for purposes of qualifying Appointed OFPs for higher Penny Pilot and Non-Penny Pilot Options, including SPY, rebates and qualifying Appointed MMs for lower fees is equitable and not unfairly discriminatory because all BX Participants, other than those that meet the definition of Common Ownership, may elect to become an Affiliated Entity as either an Appointed MM or an Appointed OFP.[32] Also, each BX Participant may participate in only one Affiliated Entity relationship at a given time, which imposes a measure of exclusivity among market participants, allowing each party to rely on the other's executed volume on BX to receive a corresponding benefit in terms of a higher rebate or lower fee. Any market participant that by definition is not under Common Ownership may elect to become a counterparty of an Affiliated Entity. Also, BX Options Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. BX Options Market Makers are subject to burdensome quoting obligations[33] to the market that do not apply to other market participants. Incentivizing these market participants to execute volume on BX may result in tighter spreads.

The Exchange's proposal to exclude Participants that are under Common Ownership from qualifying as an Affiliated Entity is reasonable because Participants under Common Ownership may aggregate volume today for purposes of chapter XV, section 2(1) pricing.[34] The Exchange's proposal to exclude Participants that by definition are under Common Ownership from qualifying as an Affiliated Entity is equitable and not unfairly discriminatory because the Exchange will apply all qualifications in a uniform manner when approving Affiliated Entities. Excluding Participants under Common Ownership from also qualifying as an Affiliated Entity is equitable and not unfairly discriminatory because they are able to aggregate volume today and qualify for higher rebates or lower fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that permitting Affiliated Entities to aggregate volume to qualify for certain rebates and reduced fees will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

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[30] The Exchange would permit Affiliated Entities to aggregate volume to obtain higher Penny Pilot Options Rebates to Add Liquidity in non-Select Symbols, Penny Pilot Options Rebates to Remove Liquidity in non-Select Symbols, Penny Pilot Options Rebates to Add Liquidity in Select Symbols, Penny Pilot Options Rebates to Remove Liquidity in Select Symbols and Non-Penny Pilot Options Rebates to Add Liquidity.

[31] The Exchange would permit Affiliated Entities to aggregate volume to obtain lower Penny Pilot Options Fees to Remove Liquidity in non-Select Symbols, Penny Pilot Options Fees to Add Liquidity in Select Symbols, Penny Pilot Options Fees to Remove Liquidity in Select Symbols, Penny Pilot Options Fees to Remove Liquidity in Select Symbols and Non-Penny Pilot Options Fees to Remove Liquidity.

[32] Both Participants must elect each other to qualify as an Affiliated Entity for one year. Participation is effected by an agreement of both parties. One party may elect to terminate the agreement at any time.

[33] Pursuant to BX Rules at chapter VII, section 5, entitled "Obligations of Market Makers," in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a BX Options Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and BX Options Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all BX Options Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. *See* chapter VII, section 2.

[34] *See* BX Rules at chapter XV for Common Ownership.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. In terms of inter-market competition, the Exchange notes that other options markets have similar incentives in place to attract volume to their markets.[35]

The Exchange's proposal to amend chapter XV, section 2 to add the definitions of "Appointed MM," "Appointed OFP" and "Affiliated Entity" does not impose an undue burden on competition because these definitions apply to all Participants uniformly.

Chapter XV, Section 2(1)—Penny Pilot and Non-Penny Pilot Options Pricing

In terms of intra-market competition, the Exchange does not believe that its proposal to permit counterparties of an Affiliated Entity to aggregate volume for purposes of qualifying Appointed OFPs for higher rebates, including SPY, and qualifying Appointed MMs for lower fees within chapter XV, section 2(1) imposes an undue burden on intra-market competition because all BX Participants, other than those under Common Ownership, may become an Affiliated Entity as either an Appointed MM or an Appointed OFP. Also, each BX Participant may participate in only one Affiliated Entity relationship at a given time, which imposes a measure of exclusivity among market participants, allowing each party to rely on the other's executed BX volume on BX to receive a corresponding benefit in terms of a higher rebate or lower fee. The Exchange will apply all qualifications in a uniform manner to all market participants that elect to become counterparties of an Affiliated Entity. Any market participant that by definition is a Participant under Common Ownership may not become a counterparty of an Affiliated Entity. Also, BX Options Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. BX Options Market Makers are subject to burdensome quoting obligations[36] to the market that do not apply to other market participants. Incentivizing these market participants to execute volume on BX may result in tighter spreads. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Appointed OFPs directing order flow to the Exchange may be eligible to qualify for a higher rebate and Appointed MMs may be eligible to qualify for lower fees, with this proposal, as a result of aggregating volume. Permitting Participants to affiliate for purposes of qualifying for chapter XV, section 2(1) higher rebates or lower fees may also encourage the counterparties that comprise the Affiliated Entities to incentivize each other to attract and seek to execute more volume on BX.

The Exchange's proposal to exclude Participants that are under Common Ownership from becoming an Affiliated Entity does not impose and [sic] undue burden on intra-market competition because Participants under Common Ownership may aggregate volume today for purposes of qualifying for higher rebates or lower fees.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[37]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2016–034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2016–034. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2016–034 and should be submitted on or before August 16, 2016.

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[35] *See* NYSE MKT LLC's ("NYSE Amex") pricing at NYSE Amex Options Fee Schedule). NYSE Amex permits aggregation of volume to qualify for the Amex Customer Engagement or ACE Program. *See* Bats BZX Exchange, Inc.'s ("BZX") fee schedule. BZX permits aggregation of volume to qualify for tiered pricing. *See* the Chicago Board Options Exchange Incorporated ("CBOE") Fees Schedule. CBOE permits aggregation of volume to qualify for credits available under an Affiliated Volume Plan or "AVP."

[36] *See* note 33 above.

[37] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17586 Filed 7–25–16; 8:45 am]

BILLING CODE 8011–01–P

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[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78373; File No. SR–NYSEArca–2016–97]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of PowerShares Government Collateral Pledge Portfolio Under NYSE Arca Equities Rule 8.600

July 20, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 6, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): PowerShares Government Collateral Pledge Portfolio. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the following under NYSE Arca Equities Rule 8.600,[4] which governs the listing and trading of Managed Fund Shares:[5] PowerShares Government Collateral Pledge Portfolio ("Fund"). The Fund is a series of the PowerShares Actively Managed Exchange Traded Trust (the "Trust").[6] Invesco PowerShares Capital Management LLC is the investment advisor for the Fund ("Adviser"). Invesco Advisers, Inc. is the sub-adviser for the Fund ("Invesco" or "Sub-Adviser"). The Bank of New York Mellon ("BNYM" or "Custodian") will be the administrator, custodian and transfer agent for the Fund. Invesco Distributors, Inc. will be the Fund's distributor ("Distributor").

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser and Sub-Adviser each is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser and Sub-Adviser each has implemented and will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Commission has previously approved listing and trading on the Exchange of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving listing and trading of PIMCO Total Return Exchange Traded Fund); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Trust is registered under the 1940 Act. On May 20, 2016, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and the 1940 Act relating to the Fund (File Nos. 333–147622 and 811–22148) (the "Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust and the Adviser (as defined below) under the 1940 Act. *See* Investment Company Act Release No. 28171 (February 27, 2008) (File No. 812–13386) ("Exemptive Order"). The Fund will be offered in reliance upon the Exemptive Order issued to the Trust and the Adviser.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. The Exchange represents that the Adviser and its related personnel are subject to Investment Advisers Act Rule 204A–1. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

Principal Investments

According to the Registration Statement, the Fund's investment objective will be to seek to provide as high a level of current income as is consistent with liquidity and minimum volatility of principal. The Fund will seek to achieve its investment objective by investing, under normal market conditions,[8] at least 80% of its net assets in a portfolio of registered U.S. government money market mutual funds (the "Underlying Funds") and in U.S. dollar-denominated government securities and other money market securities eligible for investment by U.S. government money market funds (including indirect investments in those securities through the Underlying Funds).

Under normal market conditions, the Fund intends to invest a substantial portion of its assets in the following Underlying Funds: The Treasury Portfolio, Government TaxAdvantage Portfolio, Government & Agency Portfolio and Premier US Government Money Portfolio, each of which is advised by an affiliate of the Adviser. In constructing the Fund's portfolio, the Sub-Adviser generally will allocate and reallocate the Fund's assets among the Underlying Funds on a monthly basis on an approximate pro rata basis that is based on the amount of net assets of each Underlying Fund. However, the Sub-Adviser is not required to invest the Fund's assets in any particular Underlying Fund or allocate any particular percentage of the Fund's assets to any particular Underlying Fund. Invesco may add, eliminate or replace any or all Underlying Funds at any time. Any additions to or replacements of the Underlying Funds in the Fund's portfolio also will be registered U.S. government money market funds with investment characteristics that are substantially similar to those of the Underlying Funds. The Adviser, the Sub-Adviser or their affiliates may advise some or all the Underlying Funds.

According to the Registration Statement, each Underlying Fund is a "government money market fund" (as that term is defined under Rule 2a–7 of the 1940 Act) and seeks to maintain a stable $1.00 net asset value ("NAV"). Each Underlying Fund has an investment objective of seeking to provide current income consistent with preservation of capital and liquidity. The securities held by the Underlying Funds will comply with all requirements of Rule 2a–7 and other Commission rules applicable to money market funds seeking a stable NAV. Each Underlying Fund invests at least 99.5% of its total assets in cash, government securities, and/or repurchase agreements collateralized by cash or government securities. In addition, each Underlying Fund invests only in U.S. dollar-denominated securities maturing within 397 days of the date of purchase, with certain exceptions permitted by applicable regulations, and maintains a dollar-weighted average portfolio maturity of no more than 60 days, and a dollar-weighted average portfolio maturity (as determined without exceptions regarding certain interest rate adjustments under Rule 2a–7) of no more than 120 days.

Unlike the Underlying Funds, the Fund will not be a money market fund, meaning that it will not seek to maintain a stable NAV of $1.00, nor will it be subject to other requirements of Rule 2a–7. However, the Fund will only purchase securities issued by registered government money market funds, or securities that comply with the quality and eligibility requirements of Rule 2a–7, as described above.

Additionally, the Fund and the Underlying Funds may invest in variable and floating rate instruments that are permitted under the requirements of Rule 2a–7.

The Fund and the Underlying Funds may transact in securities on a when-issued, delayed delivery or forward commitment basis. The purchase or sale of securities on a when-issued or delayed delivery basis or through a forward commitment involves the purchase or sale of securities at an established price with payment and delivery taking place in the future.

Creation and Redemption of Shares

The Trust will issue Shares of the Fund only in "Creation Unit Aggregations" on a continuous basis through the Distributor at its NAV next determined after receipt, on any business day of an order in proper form. A Creation Unit Aggregation is 50,000 Shares and the size of a Creation Unit Aggregation is subject to change.

Creation Unit Aggregations of the Fund generally will be sold principally for cash, calculated based on the NAV per Share multiplied by the number of Shares representing a Creation Unit ("Deposit Cash"), plus any applicable administrative or other transaction fees, as discussed below. The Fund also reserves the right to permit or require Creation Units to be issued in-kind. If in-kind creations are permitted or required, an investor must deposit a designated portfolio of securities ("Deposit Securities") and the "Cash Component", computed as discussed below. Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit", which represents the minimum initial and subsequent investment amount for a Creation Unit Aggregation of the Fund.

The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit Aggregation and the Deposit Amount (as defined below). The Cash Component is an amount equal to the difference between the NAV of the Shares (per Creation Unit Aggregation) and the "Deposit Amount"—an amount equal to the market value of the Deposit Securities. If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit Aggregation exceeds the Deposit Amount), the "Authorized Participant" (as defined below) will deliver the Cash Component. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit Aggregation is less than the Deposit Amount), the Authorized Participant will receive the Cash Component.

To the extent that the Fund permits or requires Creation Units to be issued in-kind, the Custodian will make available through the National Securities Clearing Commission ("NSCC") on each Business Day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time), the list of the names and the required number or par value of each Deposit Security and the amount of Cash Component to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for the Fund. Such Fund Deposit will be applicable, subject to any adjustments, to effect creations of Creation Unit Aggregations of the Fund until the Fund's deadline for the submission of purchase orders (the Fund's "Cutoff Time").

In addition, the Trust reserves the right to permit or require the substitution of an amount of cash—*i.e.,* a "cash in lieu" amount—to be added to the Cash Component to replace any

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[8] The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income securities markets or the financial markets generally; circumstances under which the Fund's investments are made for temporary defensive purposes; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Deposit Security that: (i) May not be available in sufficient quantity for delivery, (ii) may not be eligible for transfer through the systems of the Depository Trust Company ("DTC") or the "Clearing Process" (defined below) or that the Authorized Participant (defined below) is not able to trade due to a trading restriction. The Fund also reserves the right to permit or require a "cash in lieu" amount in certain circumstances, including circumstances in which the delivery of the Deposit Security by the "Authorized Participant" (as defined below) would be restricted under applicable securities or other local laws or in certain other situations.

As noted above, Creation Units currently will be available only for cash purchases. The Custodian will make available on each Business Day information on the amount of Deposit Cash required for a Creation Unit.

To be eligible to place orders with the Distributor and to create a Creation Unit Aggregation of the Fund, an entity must be (i) a "Participating Party," *i.e.*, a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC (the "Clearing Process"), a clearing agency that is registered with the Commission; or (ii) a DTC Participant. In each case, the entity must have executed an agreement with the Distributor, with respect to creations and redemptions of Creation Unit Aggregations ("Participant Agreement"). A Participating Party and DTC Participant are collectively referred to as an "Authorized Participant". Creation Units may be purchased only by or through an Authorized Participant.

To initiate an order for a Creation Unit, the Distributor or its agent must receive an irrevocable order from an Authorized Participant, in proper form, no later than 12:00 p.m., Eastern time, in each case on the date such order is placed (the "Transmittal Date") in order for creation of Creation Unit Aggregations to receive that day's NAV. An order to create Creation Unit Aggregations is deemed received by the Distributor on the Transmittal Date if (i) such order is received by the Distributor not later than 12:00 p.m., Eastern time, on such Transmittal Date and (ii) all other procedures set forth in the Participant Agreement are properly followed.

Shares may be redeemed only by Authorized Participants, and only in Creation Unit Aggregations at their NAV next determined after receipt of a redemption request in proper form by the Distributor or its agent and only on a Business Day.

Redemption requests for Creation Units of the Fund must be submitted to the Distributor by or through an Authorized Participant. An Authorized Participant must submit an irrevocable request to redeem shares of the Fund generally before 12:00 p.m., Eastern time on any Business Day in order to receive that day's NAV. Such order to redeem Creation Unit Aggregations is deemed received by the Trust on the Transmittal Date if (i) such order is received not later than 12:00 p.m., Eastern time; (ii) such order is accompanied or followed by the requisite number of Shares of the Fund; and (iii) all other procedures set forth in the Participant Agreement are properly followed.

Creation Units of the Fund generally will be redeemed for cash in an amount equal to the NAV of its Shares next determined after a redemption request is received (minus any redemption transaction fees) (the "Cash Redemption Amount").

However, the Fund reserves the right to distribute securities in-kind as payment for Creation Units being redeemed. During times when the Fund permits such in-kind redemptions, the Custodian, through the NSCC, will make available prior to the opening of business on the NYSE (currently 9:30 a.m., Eastern time) on each Business Day, the designated portfolio of securities (including any portion of such securities for which cash may be substituted) that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day ("Fund Securities") and an amount of cash, as described below. Such Fund Securities and the corresponding Cash Amount (each subject to possible amendment or correction) are applicable in order to effect redemptions of Creation Units of the Fund until the Fund's Cutoff Time. Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units.

The in-kind redemption proceeds for a Creation Unit Aggregation generally will consist of Fund Securities plus or minus cash in an amount equal to the difference between the NAV of the Fund Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the "Redemption Cash Component"), less a redemption transaction fee. In the event that the Fund Securities have a value greater than the NAV of the Fund Shares, a compensating cash payment equal to the difference is required to be made by or through an Authorized Participant by the redeeming shareholder.

The right of redemption may be suspended or the date of payment postponed (i) for any period during which the NYSE is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the NYSE is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund or determination of the Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as is permitted by the Commission.

Other Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in the securities and financial instruments described above, the Fund may invest its remaining assets in the following other assets and financial instruments, as described below.

The Fund and the Underlying Funds also may invest in certain U.S. government obligations other than those referenced above, namely Treasury receipts where the principal and interest components are traded separately under the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program ("stripped securities").

The Fund may invest directly in repurchase agreements and reverse repurchase agreements.

Investment Restrictions

The Fund will be classified as "non-diversified".[9]

The Fund intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a regulated investment company for purposes of the U.S. Internal Revenue Code of 1986, as amended.[10]

The Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[11]

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[9] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[10] 26 U.S.C. 851.

The Fund will not invest in futures, options, swaps or forward contracts.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.*, 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[12]

Net Asset Value

According to the Registration Statement, BNYM will calculate the Fund's NAV at 12:00 p.m., Eastern time, every day the NYSE is open, provided that U.S. fixed-income assets may be valued as of the announced closing time for trading in fixed-income instruments on any day that the Securities Industry and Financial Markets Association announces an early closing time. NAV is calculated by deducting all of the Fund's liabilities from the total value of its assets and dividing the result by the number of Shares outstanding, rounding to the nearest cent. Generally, the portfolio securities are recorded in the NAV no later than trade date plus one day. All valuations are subject to review by the Trust's Board of Trustees ("Board") or its delegate.

The NAV for the Fund will be calculated and disseminated on each day that the NYSE is open. In determining NAV, expenses are accrued and applied daily and securities and other assets for which market quotations are readily available are valued at market value. Securities listed or traded on an exchange generally will be valued at the last sales price or official closing price that day as of the close of the exchange where the security primarily is traded.

The Underlying Funds (including other open-end registered investment companies), Treasury securities, cash equivalents or other securities not listed on an exchange, normally will be valued using prices provided by independent pricing services. Variable and floating rate instruments, repurchase agreements and reverse repurchase agreements likewise will be valued at prices supplied by approved pricing services, which are generally based on bid-side quotations.) [sic]

The Adviser may use various pricing services or discontinue the use of any pricing service at any time. Prices obtained from independent third-party pricing services, broker-dealers or market makers to value the Fund's securities and other assets and liabilities will be based on information available at the time the Fund values its assets and liabilities. If a security's market price is not readily available, or if price quotes from a pricing service are not readily available (including where the Sub-Adviser determines that the closing price of the security is unreliable), securities will be valued by another method in [sic] that the Sub-Adviser, in its judgment, believes will better reflect the security's fair value accordance [sic] with the Trust's valuation policies and procedures approved by the Trust's Board.

The Trust's Board will be responsible for the oversight of the pricing procedures of the Fund and the valuation of the Fund's portfolio. The Trust's Board has delegated day-to-day pricing responsibilities to the Adviser's Pricing Committee, which will be composed of officers of the Adviser. The Pricing Committee will be responsible for the valuation and revaluation of any portfolio investments for which market quotations or prices are not readily available. The Trust and the Adviser have implemented procedures designed to prevent the use and dissemination of material, nonpublic information.

Availability of Information

The Fund's Web site (*www.invescopowershares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[13] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[14]

On a daily basis, the Adviser will disclose on the Fund's Web site the following information regarding each portfolio holding of the Fund and the Underlying Funds, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's or Underlying Fund's portfolio. The Web site information will be publicly available at no charge.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Information regarding market price and trading volume for the

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[11] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also*, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

[12] The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[13] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[14] Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. Price information for the Underlying Funds, other money market funds, STRIPS, U.S. government obligations, variable and floating rate instruments, repurchase agreements and reverse repurchase agreements will be available from major market data vendors. In addition, the Portfolio Indicative Value ("PIV"), as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[15] The dissemination of the PIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached.[16] Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted [sic]

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3[17] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio of the Fund will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[18]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets or other entities that are members of the Intermarket Surveillance Group ("ISG"),[19] and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its

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[15] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available PIVs taken from CTA or other data feeds.

[16] *See* NYSE Arca Equities Rule 7.12.

[17] 17 CFR 240.10A–3.

[18] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[19] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will generally be calculated as of 12:00 p.m., Eastern time, on each day the NYSE is open for trading.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [20] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a fire wall with respect to its affiliated broker-dealers [sic] regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets or other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Price information for the Underlying Funds, investment company securities, STRIPS, U.S. government obligations, variable and floating rate instruments, repurchase agreements, and reverse repurchase agreements will be available from major market data vendors. In addition, the PIV, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds U.S. government securities and other money market securities that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds U.S. government securities and other money market securities as discussed above, which will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

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[20] 15 U.S.C. 78f(b)(5).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–97 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–97. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–97 and should be submitted on or before August 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17572 Filed 7–25–16; 8:45 am]

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[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32189; 812–14597]

Mutual Fund Series Trust, et al.; Notice of Application

July 20, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X ("Disclosure Requirements"). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: Mutual Fund Series Trust ("Trust"), an Ohio Business Trust registered under the Act as an open-end management investment company with multiple series (each a "Fund") and Eventide Asset Management, LLC, a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (the "Adviser," and collectively with the Trust, the "Applicants").

FILING DATES: The application was filed January 7, 2016, and amended on March 24, 2016, June 8, 2016 and July 6, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 15, 2016, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Trust: 17605 Wright Street, Omaha, Nebraska 678130 and Adviser: One International Place, 35th Floor, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 551–6868, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. The Adviser will serve as the investment adviser to each Sub-Advised Fund pursuant to an investment advisory agreement with the Trust (each, an "Investment Management Agreement," and collectively, the "Investment Management Agreements").[1] The Adviser will provide the Sub-Advised Fund with continuous and comprehensive investment management services subject to the supervision of, and policies established by, each Sub-Advised Fund's board of directors ("Board"). The Investment Management Agreements permit the Adviser, subject to the approval of the Board, to delegate to one or more Sub-Advisers the responsibility to provide the day-to-day portfolio investment management of each Sub-

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[1] Applicants request relief with respect to the named Applicants, any future Fund of the Trust and any other existing or future registered open-end management company or series thereof that intends to rely on the requested order in the future and that: (a) Is advised by the Adviser or by any entity controlling, controlled by, or under common control with the Adviser or its successor (included in the term "Adviser"); (b) uses the multi-manager structure described in the application; and (c) complies with the terms and conditions of the application (any such series, a "Sub-Advised Fund" and collectively, the "Sub-Advised Funds"). For purposes of the requested order, "successor" is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

Advised Fund, subject to the supervision and direction of the Adviser.[2] The primary responsibility for managing the Sub-Advised Fund will remain vested in the Adviser. The Adviser will hire, evaluate, allocate assets to and oversee the Sub-Advisers, including determining whether a Sub-Adviser should be terminated, at all times subject to the authority of the Board.

2. Applicants request an exemption to permit the Adviser, subject to Board approval, to hire a Non-Affiliated Sub-Adviser or a Wholly-Owned Sub-Adviser, pursuant to Sub-Advisory Agreements and materially amend Sub-Advisory Agreements with Non-Affiliated Sub-Advisers and Wholly-Owned Sub-Advisers without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act.[3] Applicants also seek an exemption from the Disclosure Requirements to permit a Sub-Advised Fund to disclose (as both a dollar amount and a percentage of the Sub-Advised Fund's net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Advisers; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers, and (c) the fee paid to each Affiliated Sub-Adviser.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the Application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Sub-Advised Funds' shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Subadvised Funds' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the Application, the Investment Management Agreements will remain subject to shareholder approval, while the role of the Sub-Advisers is substantially equivalent to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Sub-Advised Fund. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Sub-Advised Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17607 Filed 7–25–16; 8:45 am]

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[2] A "Sub-Adviser" for a Fund is (1) an indirect or direct "wholly owned subsidiary" (as such term is defined in the Act) of the Adviser for the Fund, or (2) a sister company of the Adviser for the Fund that is an indirect or direct "wholly-owned subsidiary" (as such term is defined in the Act) of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a "Wholly-Owned Sub Adviser" and collectively, the "Wholly-Owned Sub-Advisers"), or (3) an investment sub-adviser for that Fund that is not an "affiliated person" (as such term is defined in Section 2(a)(3) of the Act) of the Fund or the Adviser, except to the extent that an affiliation arises solely because the sub-adviser serves as a sub-adviser to one or more Funds (each a "Non-Affiliated Sub-Adviser" and collectively, the "Non-Affiliated Sub-Advisers").

[3] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Sub-Advised Fund or the Adviser, other than by reason of serving as a sub-adviser to one or more of the Sub-Advised Funds ("Affiliated Sub-Adviser").

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78368; File No. SR–NYSE–2016–30]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Withdrawal of Proposed Rule Change Amending the Definition of "Block" for Purposes of Rule 72(d) and the Size of a Proposed Cross Transaction Eligible for the Cross Function in Rule 76

July 20, 2016.

On April 12, 2016, New York Stock Exchange LLC ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to pre-opening indications and opening procedures. The proposed rule change was published for comment in the **Federal Register** on April 29, 2016.[3] The Commission received no comments on the proposed rule change. On May 31, 2016, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On July 18, 2016, the Exchange withdrew the proposed rule change (File No. SR–NYSE–2016–30).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17580 Filed 7–25–16; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77701 (Apr. 25, 2016), 81 FR 25748.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 77950, 81 FR 36357 (June 6, 2016). The Commission designated July 28, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78374; File No. SR–NYSEARCA–2016–98]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rules 1.1(s) and 7.35P(a)(10)(A) to Extend the Period for the Current Trading Halt Auction Collar Price Collar Thresholds

July 20, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 8, 2016, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rules 1.1(s) and 7.35P(a)(10)(A) to extend the period for the current Trading Halt Auction Collar price collar thresholds. The proposed rule change is available on the

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 1.1(s) ("Rule 1.1(s)") and 7.35P(a)(10)(A) ("Rule 7.35P") to extend the period for the current Trading Halt price collar thresholds.

As specified in Rules 1.1(s) and 7.35P(a)(10)(A), the price collar thresholds for Trading Halt Auctions are currently set at 10% for securities with an Auction Reference Price[4] of $25.00 or less, 5% for securities with an Auction Reference Price greater than $25.00 but less than or equal to $50.00, and 3% for securities with an Auction Reference Price greater than $50.00.[5] These price collar thresholds were adopted on an interim basis and sunset on July 28, 2016.

When approving the current price collar thresholds for Trading Halt Auctions, the Commission noted that they were appropriate as an interim measure to protect investors and the public interest.[6] The Exchange committed to use the period while the interim price collar thresholds are in place to conduct an analysis to determine whether to make the proposed price collar thresholds permanent or to propose other or additional changes to its re-opening process. Since that time, under the auspices of the Operating Committee of the Regulation NMS Plan to Address Extraordinary Market Volatility ("LULD Plan"), and with input from the Advisory Committee to the LULD Plan, the Exchange has begun working with other primary listing markets and participants to the LULD Plan to identify proposed changes to the resumption of trading following a trading pause that could be applied across all automated markets. This initiative has superseded the Exchange's prior analysis relating to the resumption of trading following a trading pause.

Because the analysis associated with market-wide initiative is not expected to be completed by July 28, 2016, the Exchange proposes to extend the time for its interim price collar thresholds for Trading Halt Auctions from July 28, 2016 to January 31, 2017. The Exchange believes that extending the existing interim measures an additional six months will provide time for the participants to the LULD Plan to complete their analysis relating to the resumption of trading following a trading pause, while at the same time maintaining the current protections for Trading Halt Auctions. This extension of the time period will also provide additional time for the Exchange and other participants to the LULD Plan to amend their respective rules or the LULD Plan, as appropriate.

The Exchange continues to believe that it is appropriate to have protections in place for Trading Halt Auctions to assure that a reopening trade will not deviate significantly from prior prices, even taking into consideration natural price movements for a security. The Exchange believes that it is appropriate to maintain price collar thresholds for Trading Halt Auctions based on the clearly erroneous execution guidelines because an auction trade is subject to these guidelines for purposes of determining whether such execution is clearly erroneous. In addition, the Exchange's interim price collar thresholds are similar to how BATS BZX Exchange, Inc. ("BATS") prices its Halt Auctions for ETPs. Like BATS, the Exchange is the primary listing market only for ETPs and would, therefore only have Trading Halt Auctions for ETPs. BATS Rule 11.23(d)(2)(D) provides that BATS executes orders in ETPs in a Halt auction at a price level within a "Collar Price Range" that maximizes the number of shares executed in the auction. Similar to the Exchange's rule, BATS uses Collar Price Ranges that are based on the numerical guidelines set forth in the market-wide clearly erroneous execution rules.[7] The Exchange's Auction Collars differ from BATS's pricing mechanism because the Exchange would use the consolidated last sale price as the reference price, rather than the midpoint of a "Valid NBBO." The Exchange believes that using the consolidated last sale price tracks the market-wide clearly erroneous execution rules, which similarly use the consolidated last sale price for determining whether an execution is clearly erroneous.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that extending the interim period for the current Trading Halt Auction price collar thresholds would remove impediments to and perfect the mechanism of a fair and orderly market by providing for Auctions Collars at the Exchange pending the ongoing analysis by the participants to the LULD Plan to identify a market-wide solution to automated reopenings following a trading pause. For the extended interim basis, the price collar thresholds would continue to be aligned with the clearly erroneous execution guidelines and therefore continuing with these price collar thresholds would reduce the potential for a Trading Halt Auction to be a clearly erroneous execution. In addition, the Exchange believes that pending the outcome of the analysis being performed by the Operating Committee to the LULD Plan, extending the Exchange's interim measure an additional six months would be consistent with the protection of investors and the public interest.

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[4] As set forth in Rule 7.35P(a)(8)(A), the Auction Reference Price for Trading Halt Auctions is the last consolidated round-lot price of that trading day and, if none, the prior trading day's Official Closing Price. As set forth in Rule 1.1(s), the auction reference price is the last consolidated sale price.

[5] Rule 7.35P governs trading for symbols transitioned to the Pillar trading platform. Although all symbols are trading on the Pillar trading platform, the [sic] the Exchange proposes to amend Rule 1.1(s) so that Exchange rules that address the same topic are harmonized.

[6] *See* Securities Exchange Act Release Nos. 76994 (Jan. 28, 2016), 81 FR 5809 (Feb. 3, 2016) (SR–NYSEArca–2015–121) (Approval Order) and 77140 (Feb. 16, 2016), 81 FR 8812 (SR–NYSEArca–2016–27) (Notice of Filing).

[7] As set forth in BATS Rule 11.23(a)(6), the Collar Price Range is 10% for securities with a Collar Midpoint of $25.00 or less, 5% for securities with a Collar Midpoint greater than $25.00 but less than or equal to $50.00, and 3% for securities with a Collar Midpoint greater than $50.00. BATS Rule 11.23(a)(6) defines the Collar Midpoint as the Volume Based Tie Breaker, which is defined in BATS Rule 11.23(a)(23) as the midpoint of the NBBO if it is a Valid NBBO, with a Valid NBBO defined as where: (i) There is both a NBB and NBO for the security; (ii) the NBBO is not crossed; and (iii) the midpoint of the NBBO is less than the Maximum Percentage away from both the NBB and the NBO.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to provide for a six-month extension to the price collar thresholds for Trading Halt Auctions on the Exchange, pending the analysis being conducted by the Operating Committee to the LULD Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. As the Exchange notes, waiver of the operative delay would allow for the current price collar thresholds, which are due to expire on July 28, 2016, to continue uninterrupted pending the ongoing market-wide analysis regarding potential changes to automated reopenings following a trading pause. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2016–98 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2016–98. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2016–98 and should be submitted on or before August 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17585 Filed 7–25–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Ombudsman Matter Management System, OMB Control No. 3235–XXXX, SEC File No. 270–797.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission" or "SEC") has submitted this new request for the new collection of information to the Office of Management and Budget for approval.

Members of the public who contact the Ombudsman for assistance currently do so by traditional mail, electronic mail, telephone, and facsimile. To make it easier for retail investors and others to contact the Ombudsman electronically, the Commission is developing the Ombudsman Matter Management System ("OMMS"), a new, electronic data-collection system for the receipt, collection, and analysis of inquiries, complaints, and recommendations from retail investors directed to the SEC Ombudsman and the Office of the Investor Advocate, and invites comment on OMMS. Through OMMS, members of the public may request assistance from the Ombudsman and staff using a web-based form (the "OMMS Form") tailored to gather information about matters within the scope of the Ombudsman's function and streamline the inquiry and response process.

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

The OMMS Form will facilitate communication with the Ombudsman via an electronic series of basic questions with user-friendly response features such as radio buttons, drop-down menu responses, pop-up explanation bubbles, Web page links, fillable narrative text fields, and document upload options. In addition, the OMMS Form incorporates functionality that, depending upon certain responses, pre-populates specific fields, and prompts the user to provide additional information. By eliciting specific information from the user, the OMMS Form will facilitate communication between the user and the Ombudsman, reduce response and resolution times, and maximize Ombudsman staff resources available for recording, processing, and responding to matters. The requested information collection is voluntary and will not change the contact methods currently available.

The Commission expects that OMMS will be operative and the OMMS Form publicly available through the Commission's Web site, *https://www.sec.gov.* The Commission estimates that the total reporting burden for using the OMMS Form will be 250 hours. The calculation of this estimate depends on how many members of the public use the form each year and the estimated time it takes to complete the forms: 500 respondents × 30 minutes = 250 burden hours. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. The total estimated one-time cost to the federal government of creating OMMS and the OMMS Form is $400,000.

An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget control number.

Written comments are invited on all aspects of this proposed information collection request, in particular: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Background documentation for this information collection may be viewed at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: July 21, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17636 Filed 7–25–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78371; File No. SR–NYSE–2016–43]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change for a New Rule 346 Prohibiting Association by Member Organizations, Principal Executives, Approved Persons, and Persons Associated With a Member Organization or Control Persons of Member Organizations With Persons Subject to a Statutory Disqualification

July 20, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 14, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add a new Rule 346 prohibiting association by member organizations, approved persons, and persons associated with a member organization or control persons of member organizations with persons subject to a statutory disqualification. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes a new Rule 346 prohibiting association by member organizations, principal executives, approved persons, and persons associated with a member organization or control persons of member organizations with persons subject to a statutory disqualification.

Background

In 2007, the Exchange and FINRA[4] entered into an agreement (the "Agreement") pursuant to Rule 17d–2 under the Act to reduce regulatory duplication by allocating to FINRA certain regulatory responsibilities for NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules").[5] In order to reduce regulatory duplication and relieve firms that are members of the Exchange and FINRA of conflicting or unnecessary regulatory burdens, FINRA has been reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6]

As part of the rule consolidation process, in 2010, FINRA adopted NASD Rule 3030 (Outside Business Activities of an Associated Person) as FINRA Rule 3270 (Outside Business Activities of Registered Persons) in the consolidated FINRA rulebook. FINRA also deleted FINRA Incorporated NYSE Rule 346 (Limitations—Employment and Association with Members and Member Organizations) and related interpretations.[7] In 2011, to correspond with the changes by FINRA, the Exchange adopted FINRA Rule 3270 as NYSE Rule 3270 and deleted Rule 346 in its entirety.[8]

Prior to its deletion in 2011, subdivision (f) of Rule 346 provided that, unless permitted by the Exchange, no member, member organization, approved person, person associated with a member organization or any person directly or indirectly controlling, controlled by or under common control with a member or member organization shall have associated with him or it any person who is known, or in the exercise of reasonable care should be known, to be subject to any "statutory disqualification" defined in Section 3(a)(39) of the Act.[9] Because FINRA had previously amended its definition of disqualification in its By-Laws to align with the definition in the Act, FINRA deleted Rule 346(f) as redundant.[10] When the Exchange adopted FINRA Rule 3270 as NYSE Rule 3270, it deleted Rule 346 in its entirety, including subdivision (f).[11] The Exchange did not delete the associated rule interpretations, which the Exchange now proposes to delete.

Proposed Rule Change

The Exchange's deletion of Rule 346(f) was inadvertent.[12] The Exchange accordingly proposes to reintroduce the standards contained in deleted Rule 346(f) as new Rule 346. In particular, proposed Rule 346 would provide that, except as otherwise permitted by the Exchange, no member organization, principal executive, approved person, person associated with a member organization or any person directly or indirectly controlling, controlled by or under common control with a member organization shall have associated with it any person who is known, or in the exercise of reasonable care should be known, to be subject to any "statutory disqualification" defined in Section 3(a)(39) of the Act.

The proposed rule text is the same as former Rule 346(f) except that the proposed rule would not use the terms "member" or "employee." Under Exchange rules, the term "member organization" means a registered broker or dealer (unless exempt pursuant to the Act) that is a member of FINRA or another registered securities exchange.[13] The term "member" means a natural person associated with a member organization that has been approved by the Exchange and designated by such member organization to effect transactions on the floor of the Exchange or any facility thereof.[14] A "member" is not a registered broker-dealer and does not have employees; only member organizations have employees. For purposes of the proposed change, the Exchange proposes to continue using the phrase "person associated with a member organization" to indicate employees of a member organization.[15] The proposed rule would also use the term "principal executives," which replaced "allied members" in 2008.[16] The proposed rule is also substantially similar to Rule 342(e) of the Exchange's affiliate, NYSE MKT LLC.[17]

Finally, the Exchange proposes to delete NYSE Rule Interpretations 346(e)/01–03 as unnecessary in light of the adoption of Rule 3270 or duplicative of new proposed Rule 346.

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[4] NYSE Regulation, Inc., a former not-for-profit subsidiary of the Exchange, was also a party to the Agreement by virtue of the fact that it performed regulatory functions for the Exchange pursuant to a delegation agreement. *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251, 11264–65 (March 6, 2006) (SR–NYSE–2005–77) (approving delegation agreement). The delegation agreement terminated on February 16, 2016, and NYSE Regulation has ceased providing regulatory services to the Exchange, which has re-integrated its regulatory functions.

[5] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as "Common Rules"). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA or the Exchange to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[7] *See* Securities Exchange Act Release No. 62762 (August 23, 2010), 75 FR 53362 (August 31, 2010) (SR–FINRA–2009–042) ("Release No. 62762").

[8] *See* Securities Exchange Act Release No. 64131 (March 28, 2011), 76 FR 18285 (April 1, 2011) (SR–NYSE–2011–12) ("Release No. 64131").

[9] *See* Release No. 62762, 75 FR at 53363.

[10] *Id.* FINRA also deleted related NYSE Interpretations 346(e)/01–03.

[11] *See* Release No. 64131, 76 FR 18286.

[12] The processing of new membership applications at the Exchange includes statutory disqualification disclosures and background investigations of prospective member organizations and persons associated with a member organization. Since 2010, review, assessment, and processing of NYSE membership applications has been conducted on behalf of the Exchange by FINRA pursuant to a regulatory services agreement. Although Rule 346(f) was inadvertently deleted in 2011, the Exchange continued to work with FINRA to seek disclosure of and identify persons subject to any statutory disqualification as defined in Section 3(a)(39) of the Act and take appropriate action in individual cases. For example, whenever Exchange staff has reason to believe that a disqualification exists or that a member organization or covered person otherwise fails to meet the eligibility requirements of the Exchange, the Exchange can issue a notice of disqualification or ineligibility under NYSE Rule 9522(a)(1). For purposes of Rule 9522, a "covered person" means a member, principal executive, approved person, registered or non-registered employee of a member organization, or other person (excluding a member organization) subject to the Exchange's jurisdiction. *See* Rule 9521(g).

[13] *See* Rule 2(b)(i).

[14] *See* Rule 2(a).

[15] *See, e.g.,* Rule 9000 Series.

[16] *See* Securities Exchange Act Release No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (SR–NYSE–2008–80).

[17] MKT LLC Rule 342(e) provides that "[e]xcept as otherwise permitted by the Exchange, no member, member organization, allied member, approved person, employee, or any person directly or indirectly controlling, controlled by or under common control with a member or member organization shall have associated with him or it any person who is known, or in the exercise of reasonable care should be known, to be subject to any "statutory disqualification" defined in Section 3(a)(39) of the Securities Exchange Act of 1934." As noted previously, the NYSE eliminated allied members in 2008. *See* note 16, *supra*.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and Section 6(b)(1) of the Act,[19] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. Specifically, the Exchange believes that reinstating deleted rule text prohibiting the association of member organizations and related persons with individuals meeting the definition of a "statutory disqualification" under the Act supports the objectives of the Act by enabling the Exchange to enforce the prohibitions contained therein regarding association with persons subject to a statutory disqualification, and is thus consistent with Section 6(b)(1).

For similar reasons, the Exchange believes that the filing furthers the objectives of Section 6(b)(5) of the Act,[20] because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. As discussed above, the Exchange believes that the reintroducing the prohibition on member organizations and related persons from associating with statutory disqualified persons that was inadvertently deleted would remove impediments to and perfect the mechanism of a free and open market by eliminating a regulatory disparity between the rules of the Exchange and FINRA, thereby also further harmonizing those rules. Finally, the Exchange believes that the proposed rule change would not be inconsistent with the public interest and the protection of investors because investors would not be harmed by the reintroduction of a rule previously approved by the Commission that reflects the Act's requirements regarding association with statutorily disqualified persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[21] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather to achieve greater transparency and consistency between the Exchange's rules and FINRA's requirements concerning statutory disqualification.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[22] and Rule 19b–4(f)(6) thereunder.[23] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–43. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–43 and should be submitted on or before August 16, 2016.

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[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(1).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(8).

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17583 Filed 7–25–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9652]

Culturally Significant Objects Imported for Exhibition Determinations: "Gustav Klimt and the Women of Vienna's Golden Age, 1900–1918" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition "Gustav Klimt and the Women of Vienna's Golden Age, 1900–1918," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Neue Galerie, New York, New York, from on or about September 22, 2016, until on or about January 16, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including an imported object list, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: July 15, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–17689 Filed 7–25–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9650]

Culturally Significant Objects Imported for Exhibition Determinations: "Insecurities: Tracing Displacement and Shelter" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition "Insecurities: Tracing Displacement and Shelter," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Museum of Modern Art, New York, New York, from on or about October 1, 2016, until on or about January 22, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including an imported object list, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: July 15, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–17690 Filed 7–25–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9651]

Culturally Significant Objects Imported for Exhibition Determinations: "Richard Learoyd: Studio Work" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Richard Learoyd: Studio Work," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los Angeles, California, from on or about August 30, 2016, until on or about November 27, 2016, the Nelson-Atkins Museum of Art, Kansas City, Missouri, from on or about February 10, 2017, until on or about May 28, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: July 15, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–17691 Filed 7–25–16; 8:45 am]

BILLING CODE 4710–05–P

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[27] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 9653]

Culturally Significant Objects Imported for Exhibition Determinations: "Arts of Korea" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Arts of Korea," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about October 1, 2016, until on or about September 22, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: July 15, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–17693 Filed 7–25–16; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from three individual researchers that work for the Consumer Financial Protection Bureau, Department of Justice, and Georgetown University (WB16–30a—7/19/16) for permission to use certain unmasked data from the Board's 1984–2003 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2016–17638 Filed 7–25–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[4910–RY]

Notice of Final Federal Agency Actions of Proposed Highway/Interchange Improvement in California; Statute of Limitations on Claims

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of statute of limitations on claims.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to the proposed interchange improvement project on Interstate 405 (I–405) from Western Avenue to W. 182nd Street in the City of Torrance within the County of Los Angeles, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: A claim seeking judicial review of the Federal Agency Actions on the highway project will be barred unless the claim is filed on or before December 23, 2016. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Eduardo Aguilar, Branch Chief, Environmental Planning Division, California Department of Transportation—District 7, 100 South Main Street, Los Angeles California 8 a.m. to 5 p.m., 213–897–8492, *eduardo_aguilar@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans, has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Caltrans proposes to construct new auxiliary/deceleration lanes on the northbound and southbound I–405 freeway mainline, widen existing on-and-off-ramps, and construct a new, two-lane on-ramp to southbound I–405 from Crenshaw Boulevard. Additionally, Caltrans proposes to widen Crenshaw Boulevard south of the interchange to accommodate a new, exclusive right-turn lane onto the new proposed southbound I–405 on-ramp, widen westbound 182nd Street between the northbound I–405 on-and-off-ramps and Crenshaw Boulevard to accommodate new turn movements and geometrical improvements, and widen the Van Ness Avenue undercrossing at I–405 to accommodate the new auxiliary/deceleration lanes on the freeway mainline. Reconstruction of existing soundwalls, and construction of additional soundwalls and retaining walls along both the northbound and southbound I–405 mainline are also associated with the proposed project improvements. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Initial Study (IS) with Negative Declaration (ND)/Environmental Assessment (EA) with Finding of No Significant Impact (FONSI), approved on June 29, 2016, and in other documents in the FHWA project records. The Final IS/EA with ND/FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans Final IS/EA with ND/FONSI can be viewed and downloaded from the project Web site at: *http://www.dot.ca.gov/d7/env-docs/docs/29360_IS.EA.fin.track_binder_06.30.2016.pdf,* or viewed at public libraries in the project area. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

(1) Council on Environmental Quality regulations;

(2) National Environmental Policy Act (NEPA);

(3) Moving Ahead for Progress in the 21st Century Act (MAP–21);

(4) Department of Transportation Act of 1966;

(5) Federal Aid Highway Act of 1970;

(6) Clean Air Act Amendments of 1990;

(7) Noise Control Act of 1970;

(8) 23 CFR part 772 FHWA Noise Standards, Policies and Procedures;

(9) Department of Transportation Act of 1966, section 4(f);

(10) Clean Water Act of 1977 and 1987;

(11) Endangered Species Act of 1973;

(12) Migratory Bird Treaty Act;

(13) National Historic Preservation Act of 1966, as amended;

(14) Historic Sites Act of 1935; and,

(15) Executive Order 13112, Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Issued on: July 19, 2016.

Josue M. Yambo,

Senior Transportation Engineer, Federal Highway Administration, California Division.

[FR Doc. 2016–17645 Filed 7–25–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: Section 5334(h) of the Federal Transit Laws, as codified, 49 U.S.C. 5301, *et seq.,* permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal Agencies that the Michigan Department of Transportation intends to transfer the former transportation operations and maintenance facility to the City of Holland. The physical address of the facility is 429 24th Street, Holland, Michigan, and it is surrounded by residential, commercial and other exempt properties.

DATES: *Effective Date:* Any Federal agency interested in acquiring the facility must notify the FTA Region V Office of its interest by August 25, 2016.

ADDRESSES: Interested parties should notify the Regional Office by writing to Marisol R. Simón, Regional Administrator, Federal Transit Administration, 200 West Adams Street, Suite 320, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Kathryn Loster, Regional Counsel, at 312–353–3869.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. Section 5334(h) provides guidance on the transfer of assets no longer needed. Specifically, if a recipient of FTA assistance decides an asset acquired at least in part with federal assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. 49 U.S.C. Section 5334(h)(l).

Determinations

The Secretary may authorize a transfer for a public purpose other than public transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. Section 5334(h)(l)(D). Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing facility, FTA will make certain that the other requirements specified in 49 U.S.C. Section 5334(h)(1)(A) through (C) are met before permitting the asset to be transferred.

The 9,564 square foot facility is situated on a rectangular, 286,595 (approximate) square foot city-owned parcel situated between several other city-owned buildings. The land will be retained by the City of Holland. The facility is an industrial-type facility that includes a front office and/or administration section as well as a large, attached, multi-purpose shop/warehouse in the back. The land on which this building sits is approximately 6.5 acres with dimensions of 250 feet on its north side and 1,237 feet on its east side. Given that the building is located on city-owned land with no federal interest, and is surrounded by city-owned property without public street access, the building would need to be relocated.

The rear building section has exterior dimensions of 80 feet wide by 100 feet long by 18 feet in height. It is approximately 8,000 square feet in area. This space is generally open in layout but includes a block partitioned storage area of approximately 750 square feet. This rear building section has a concrete slab floor, masonry block exterior walls, flat metal truss roof and three large metal vehicular size doors.

The building improvements in the office area consist of concrete foundations, basic concrete slab floors, masonry side walls, sloped metal roof with gutters and downspouts, and various entry doors and windows. This front office section has package heating and cooling, a ceiling height of ten feet, and is 1,564 square feet in area. The interior includes three offices, various work areas, a utility room, a break area, two lavatories, and various small closets/storage rooms.

Other miscellaneous site improvements include several sidewalks and asphalt surfaced parking and vehicle maneuvering areas. The general condition of the building appears fair in overall condition from an architectural and structural standpoint and is approximately 27 years old with a 50 year depreciation. The legal property description is as follows: E 7.5 A OF SE ¼ OF NW ¼ EXC S 233 FT OF W. 100 FT, ALSO EXC N. 33 FT & S 33 FT. SEC 33 T5N R15W 6.7A M/L.

Marisol R. Simón,

Regional Administrator, FTA Region V.

[FR Doc. 2016–17626 Filed 7–25–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0074 (Notice No. 2016–13)]

Hazardous Materials: FAST Act Insurance and Liability Study; Request for Comments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: On December 4, 2015, President Obama signed legislation entitled, "Fixing America's Surface Transportation Act of 2015" (the FAST Act). The FAST Act includes the "Hazardous Materials Transportation Safety Improvement Act of 2015" in Sections 7001 through 7311, which provides direction for PHMSA's hazardous materials safety program.

Section 7310 of the FAST Act requires the Secretary of Transportation to initiate a study of the levels and structure of insurance for railroad carriers transporting hazardous materials, which must be initiated within four months of the enactment of the FAST Act. Within a year of initiation, the Secretary must submit a report with the results of the study and recommendations for addressing liability issues with rail transportation of hazmat to Congress. PHMSA initiated this insurance study in March 2016 and is on schedule to complete it by April 2017. Specifically, PHMSA entered into an inter-agency agreement with the U.S. Department of Transportation (DOT) Office of Research and Technology's Volpe National Transportation Systems Center to conduct the study, which is required to examine current and future levels and mechanisms to insure rail carriers transporting all hazardous materials. The study will evaluate the following: (1) The level and structure of insurance, including self-insurance, available in the private market against the full liability potential for damages arising from an accident or incident involving a train transporting hazardous materials; (2) The level and structure of insurance necessary and appropriate to efficiently allocate risk and financial responsibility for claims; and to ensure that a railroad carrier transporting hazardous materials can continue to operate despite the risk of an accident or incident; and (3) The potential applicability for a train transporting hazardous materials, of an alternative insurance model, including a secondary liability coverage pool or pools to supplement commercial insurance; and other models administered by the Federal Government.

DATES: Comments on this notice will be accepted until September 9, 2016.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2016–0074) by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Fax: (202) 493–2251.
- Mail: Docket Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- Hand Delivery: To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice. Internet users may access comments received by DOT at: *http://www.regulations.gov.* Note that the comments received will be posted without change to: *http://www.regulations.gov* and will include any personal information provided. When providing comments, please identify the following:

- Organization Name,
- Type of Organization (*e.g.* rail carrier, shipper, insurer, trade organization, government, etc.), and
- An explanation of your interest in this study.

FOR FURTHER INFORMATION CONTACT: Robert Benedict, (202) 366–8553, Program Development Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Request for Comments: As part of this study, PHMSA is conducting a review of existing data and literature with regard to current insurance liability levels and structure for rail carriers transporting hazardous materials. This review examines publically available insurance and liability data, including information released by the rail carriers, information released by industry trade associations, data and reports regarding the insurance industry, previous academic, government, or industry studies, and other public sources.

Given the large scope of this study, PHMSA is seeking public comment. Specifically, in an effort to provide an opportunity for stakeholder input on the study and potential sources of data and literature, PHMSA is issuing this notice requesting comment on insurance and liability coverage for rail carriers transporting hazardous materials. PHMSA is requesting input that would inform the study, as well as any available insurance and liability literature and data that may be relevant to this topic.

In addition, PHMSA is seeking input and data related to the following specific questions.

Level and Structure of Insurance and Liability Coverage

1. Please comment on, or provide data relating to, the current level, structure, and type of liability insurance coverage (including self-insurance and retentions) available for hazardous materials transportation by rail. Specifically, please address the following:

- Cost and scope of coverage
- State and Federal Requirements
- Changes in the cost or availability of liability insurance
- Issues unique to your industry, commodity, and/or entity size

2. Are the current levels of liability insurance coverage for hazardous materials transportation by rail appropriate?

- If not, what would be considered an appropriate level?
- Are there policy or market changes that could alter your perspective on what is adequate?
- How do you anticipate this changing in the future?

3. What are the drivers of the current coverage limits for hazardous materials transportation liability insurance?

- Are there policy or market changes that could enable the availability of higher coverage limits?
- How do you anticipate this changing in the future?

4. As hazardous materials transportation by rail is a cross-border enterprise, how, if at all, do foreign requirements related to insurance and liability coverage impact the level, structure and type of insurance and liability coverage held domestically?

Insurance and Liability Alternatives

5. Please comment on, or provide data relating to, any previous or current initiatives for sharing the cost of insurance and/or legal liability for hazardous material by rail incidents between shipper and carrier.

6. Please comment on, or provide data relating to, any other legislative, policy, or voluntary approaches from other industries that may be applicable to

liability and insurance related to hazardous materials transportation by rail. To the extent possible, please comment on any potential economic, safety, and environmental considerations related to these alternative approaches.

7. Other industries and foreign governments have implemented programs that impose fees to fund secondary liability coverage and/or create liability caps. Is this a feasible alternative for hazardous materials transportation by rail?

Other Information

8. Please provide any potential studies and data sources that may inform this study.

9. Commenters are invited to address any other considerations related to liability and the rail transport of hazardous materials not addressed above.

Signed in Washington, DC, on July 21, 2016.

William Schoonover,

Acting Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–17615 Filed 7–25–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Renewal Without Change; Comment Request; Imposition of Special Measure Against Banco Delta Asia, Including Its Subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of a continuing effort to reduce paperwork and respondent burden, the Financial Crimes Enforcement Network ("FinCEN") invites comment on a renewal, without change, to information collection requirements finalized on March 19, 2007 (72 FR 12730, RIN 1506–AA83) imposing a special measure against Banco Delta Asia, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a financial institution of primary money laundering concern. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before September 26, 2016.

ADDRESSES: Written comments should be submitted to: Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Attention: Comment Request; Imposition of Special Measure against Banco Delta Asia.

- Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov,* with the caption, "Attention: Comment Request; Imposition of Special Measure against Banco Delta Asia" in the body of the text.
- Please submit by one method only. All comments submitted by either method in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: Comments will be posted on the FinCEN public Web site. Persons wishing to review the comments submitted may access the posted comments by going to *https://www.fincen.gov/statutes_regs/frn/.*

FOR FURTHER INFORMATION CONTACT: FinCEN Resource Center at 1–800–767–2825 or 1–703–905–3591 (not a toll free number) and select option 3 for regulatory questions. Email inquiries can be sent to *FRC@fincen.gov.*

SUPPLEMENTARY INFORMATION:

Abstract: The Director of FinCEN is the delegated administrator of the Bank Secrecy Act ("Act"). The Act authorizes the Director to issue regulations to require all financial institutions defined as such in the Act to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism.[1]

The notice of final rulemaking implemented section 5318A of Title 31, United States Code, by adding section § 1010.655 to 31 CFR Chapter X. In general, the regulations require covered financial institutions to establish, document, and maintain programs as an aid in protecting and securing the U.S. financial system.

Title: Imposition of Special Measure against Banco Delta Asia, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a financial institution of primary money laundering concern.

Office of Management and Budget ("OMB") Control Number: 1506–0045.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the imposition of a special measure against Banco Delta Asia, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a financial institution of primary money laundering concern pursuant to the authority contained in 31 U.S.C. 5318A.

Current Action: Renewal without change for existing proposed regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses and certain not-for-profit institutions.

Burden: Estimated Number of Respondents: 5,000.

Estimated Number of Responses: 5,000.

Estimated Number of Hours: 5,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Records required to be retained under the Act must be retained for five years. Generally, information collected pursuant to the Act is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

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[1] Public Law 91–508, as amended and codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959 and 31 U.S.C. 5311–5332. Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56.

Dated: July 21, 2016.

Jamal El-Hindi,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2016–17631 Filed 7–25–16; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Orders 13582, 13572, 13573, and 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of 12 persons whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13582, 3 persons whose property and interests in property are blocked pursuant to E.O. 13572, 2 persons whose property and interests in property are blocked pursuant to E.O. 13573, and 3 persons whose property and interests in property are blocked pursuant to E.O. 13382.

DATES: OFAC's actions described in this notice were effective on July 21, 2016, as further specified below.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Associate Director for Sanctions Policy & Implementation, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's Web site (*www.treas.gov/ofac*).

Notice of OFAC Actions

On July 21, 2016, OFAC blocked the property and interests in property of the following 12 persons pursuant to E.O. 13582, "Blocking Property of the Government of Syria and Prohibiting Certain Transactions with Respect to Syria":

Individuals

1. HABIB, Salah (a.k.a. HABIB, Saleh; a.k.a. HABIB, Salih), Villa 43A, al Syniar Street, Jumeirah 3, P.O. Box 127074, Dubai, United Arab Emirates; DOB 05 Jul 1962; POB Ain el-Karm, Syria; citizen France; alt. citizen Syria; Passport 13AF69606 (France) expires 06 Feb 2023; Position: Owner; Alt. Position: General Manager; Alt. Position: Chief Executive Officer (individual) [SYRIA] (Linked To: YONA STAR INTERNATIONAL).

2. LANG, Jonha (a.k.a. GANGSHAN, Lang), Yuhong District, Shenyang, China; DOB 15 Dec 1978; citizen China; Citizen's Card Number 211226197812154256 (China); Position: T-Rubber Representative; Alt. Position: T-Rubber Sales Manager (individual) [SYRIA] (Linked To: T-RUBBER CO., LTD).

3. ARBASH, Yusuf (a.k.a. ARBASH, Yusef Mikhail); DOB Oct 1960; nationality Russia; Position: Head of Hesco Engineering and Construction Ltd's Office in Russia (individual) [SYRIA] (Linked To: HESCO ENGINEERING & CONSTRUCTION CO).

4. TIZINI, Nabil (a.k.a. TAZINI, Nabil); DOB 02 Jun 1968; nationality Syria; Passport N009894266; UAE Identification 784–1968–9720837–5; Position: Financial Manager at Hesco Engineering and Construction Ltd in Moscow (individual) [SYRIA] (Linked To: ARBASH, Yusuf; Linked To: HESCO ENGINEERING & CONSTRUCTION CO).

5. ALI, Aous (a.k.a. AL-ALI, Aous; a.k.a. ALI, Aus; a.k.a. ALI, Aws); DOB 15 Feb 1977; POB Damascus, Syria; citizen Syria (individual) [SYRIA] (Linked To: MAKHLUF, Rami).

6. KHOURI, Atiya (a.k.a. AL-KHURI, Attiyah; a.k.a. AL-KHURY, Atiyah; a.k.a. KHOURY, Attiyah; a.k.a. KHURI, Atiyah; a.k.a. KHURI, Attiyah; a.k.a. KHURY, Attiyah); DOB 25 Jul 1971; POB Homs, Syria; citizen Syria (individual) [SYRIA] (Linked To: MAKHLUF, Rami; Linked To: SYRIATEL; Linked To: MAYALEH, Adib).

7. KHURI, Imad Mtanyus; DOB 03 Oct 1964; nationality Syria; citizen Russia (individual) [SYRIA] (Linked To: KHURI, Mudalal).

Entities

1. T-RUBBER CO., LTD (a.k.a. T-RUBBER COMPANY; a.k.a. T-RUBBER LTD; a.k.a. "T-RUBBER"), Rubber Industrial Zone, Shaling Town, Yuhong District, Shenyang 110144, China; No. 5–1, Shenxi Sandong Road, Economic Technology Development Area, Shenyang, Liaoning 110002, China; Web site *http://www.t-rubber.com/* [SYRIA].

2. YONA STAR INTERNATIONAL (a.k.a. UNISTAR COMPANY; a.k.a. YONA HOLDING; a.k.a. YONA STAR; a.k.a. YONA STAR COMPANY; a.k.a. YONA STAR SHIPPING; a.k.a. YONA STAR TRADING INTERNATIONAL CO. LTD.), Damascus Airport Free Zone, Damascus, Syria; Al Maktoum Street, Building MM Office # 7, Deira, Dubai, United Arab Emirates; Web site *http://www.yonastar.com* [SYRIA].

3. MONETA TRANSFER AND EXCHANGE (a.k.a. MONETA EXCHANGE COMPANY; a.k.a. MONETA MONEY EXCHANGE; a.k.a. MONETA MONEY TRANSFER & EXCHANGE; a.k.a. MONETA TRANSFER & EXCHANGE), Damascus, Syria [SYRIA] (Linked To: KHOURI, Atiya; Linked To: MAKHLUF, Rami; Linked To: SYRIATEL; Linked To: MAYALEH, Adib).

4. E.K.-ULTRA FINANCIAL GROUP LIMITED, Anexartisias, 118, Floor 1, Flat 101, Limassol 3040, Cyprus; Registration ID HE 242159 [SYRIA] (Linked To: NICOLAOU, Nicos).

5. ARGUS CONSTRUCTION, P.O. Box 556, Main Street, Charlestown, Saint Kitts and Nevis [SYRIA] (Linked To: ABDULKARIM, Wael).

On July 21, 2016, OFAC additionally blocked the property and interests in property of the following 3 persons pursuant to E.O. 13572, "Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria." These persons also are named above as blocked pursuant to E.O. 13582:

Individuals

1. ALI, Aous (a.k.a. AL-ALI, Aous; a.k.a. ALI, Aus; a.k.a. ALI, Aws); DOB 15 Feb 1977; POB Damascus, Syria; citizen Syria (individual) [SYRIA] (Linked To: MAKHLUF, Rami).

2. KHOURI, Atiya (a.k.a. AL-KHURI, Attiyah; a.k.a. AL-KHURY, Atiyah; a.k.a. KHOURY, Attiyah; a.k.a. KHURI, Atiyah; a.k.a. KHURI, Attiyah; a.k.a. KHURY, Attiyah); DOB 25 Jul 1971; POB Homs, Syria; citizen Syria (individual) [SYRIA] (Linked To: MAKHLUF, Rami; Linked To: SYRIATEL; Linked To: MAYALEH, Adib).

Entity

1. MONETA TRANSFER AND EXCHANGE (a.k.a. MONETA EXCHANGE COMPANY; a.k.a. MONETA MONEY EXCHANGE; a.k.a. MONETA MONEY TRANSFER & EXCHANGE; a.k.a. MONETA TRANSFER & EXCHANGE), Damascus, Syria [SYRIA] (Linked To: KHOURI, Atiya; Linked To: MAKHLUF, Rami; Linked To: SYRIATEL; Linked To: MAYALEH, Adib).

On July 21, 2016, OFAC additionally blocked the property and interests in property of the following 2 persons pursuant to E.O. 13573, "Blocking Property of Senior Officials of the Government of Syria." These persons also are named above as blocked pursuant to E.O. 13582 and E.O. 13572:

Individual

1. KHOURI, Atiya (a.k.a. AL-KHURI, Attiyah; a.k.a. AL-KHURY, Atiyah; a.k.a. KHOURY, Attiyah; a.k.a. KHURI, Atiyah; a.k.a. KHURI, Attiyah; a.k.a. KHURY, Attiyah); DOB 25 Jul 1971; POB Homs, Syria; citizen Syria (individual) [SYRIA] (Linked To: MAKHLUF, Rami; Linked To: SYRIATEL; Linked To: MAYALEH, Adib).

Entity

1. MONETA TRANSFER AND EXCHANGE (a.k.a. MONETA EXCHANGE COMPANY; a.k.a. MONETA MONEY EXCHANGE; a.k.a. MONETA MONEY TRANSFER & EXCHANGE; a.k.a. MONETA TRANSFER &

EXCHANGE), Damascus, Syria [SYRIA] (Linked To: KHOURI, Atiya; Linked To: MAKHLUF, Rami; Linked To: SYRIATEL; Linked To: MAYALEH, Adib).

On July 21, 2016, OFAC blocked the property and interests in property of the following 3 persons pursuant to E.O. 13382, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters":

Individual

1. MAHROUS, Iyad Mohammad Esam (a.k.a. MAHROUS, Iyad; a.k.a. MAHRUS, Iyad); DOB 12 May 1971; nationality Syria; Passport N006478882 (individual) [NPWMD] (Linked To: SCIENTIFIC STUDIES AND RESEARCH CENTER).

Entities

1. MAHROUS GROUP (a.k.a. AL MAHRUS GROUP TRADING COMPANY; a.k.a. MAHROUS TRADING ESTABLISHMENT; a.k.a. MAHROUS TRADING INSTITUTE; a.k.a. MAHRUS GROUP; a.k.a. MAHRUS TRADING ESTABLISHMENT), Rawda Street, Damascus, Syria; Al Rawdah, Damascus, Syria [NPWMD] (Linked To: SCIENTIFIC STUDIES AND RESEARCH CENTER).
2. MAHROUS TRADING FZE (a.k.a. MAHRUS TRADING FZE), P.O. Box 16111, Ras Al Khaimah, United Arab Emirates [NPWMD] (Linked To: SCIENTIFIC STUDIES AND RESEARCH CENTER).

Dated: July 21, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–17637 Filed 7–25–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 38 U.S.C. App. 2 that a meeting of the Advisory Committee on Homeless Veterans will be held August 23, 2016 through August 26, 2016. On August 23 through August 25, the Committee will meet at the West Los Angeles Department of Veterans Affairs, 11301 Wilshire Boulevard, Los Angeles, California 90073 in Building 500, Room 1281 from 9:00 a.m. to 4:00 p.m. On August 26, the Committee will meet at the West Los Angeles Department of Veterans Affairs, 11301 Wilshire Boulevard, Los Angeles, California 90073 in Building 500, Room 1281 from 9:00 a.m. to 11:00 a.m. The meeting will be open to the public.

The purpose of the Committee is to provide the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of VA in assisting homeless Veterans. The Committee shall assemble and review information related to the needs of homeless Veterans and provide advice on the most appropriate means of providing assistance to that subset of the Veteran population. The Committee will make recommendations to the Secretary regarding such activities.

The agenda will include briefings from officials at VA and other agencies regarding services for homeless Veterans. The Committee will also receive a briefing on the annual report that was developed after the last meeting of the Advisory Committee on Homeless Veterans and will then discuss topics for its upcoming annual report and recommendations to the Secretary of Veterans Affairs.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments on issues affecting homeless Veterans for review by the Committee to Anthony Love, Designated Federal Officer, VHA Homeless Programs Office (10NC1), Department of Veterans Affairs, 90 K Street, Northeast, Washington, DC at *Anthony.Love@va.gov.*

Members of the public who wish to attend should contact both Charles Selby and Timothy Underwood of the VHA Homeless Program Office by August 19, 2016, at *Charles.Selby@va.gov* and *Timothy.Underwood@va.gov,* while providing their name, professional affiliation, address, and phone number. A valid government issued ID is required for admission to the meeting. Attendees who require reasonable accommodation should state so in their requests.

Dated: July 20, 2016.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–17605 Filed 7–25–16; 8:45 am]

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Part II

Department of Transportation

Federal Transit Administration

49 CFR Parts 625 and 630
National Transit Database; Transit Asset Management; Final Rule; Notices;
National Transit Database: Capital Asset Reporting; Transit Asset
Management: Proposed Guidebooks

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Parts 625 and 630

[Docket No. FTA–2014–0020]

RIN 2132–AB07

Transit Asset Management; National Transit Database

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Federal Transit Administration is publishing a final rule to define the term *state of good repair* and to establish minimum Federal requirements for transit asset management that will apply to all recipients and subrecipients of chapter 53 funds that own, operate, or manage public transportation capital assets. This final rule requires public transportation providers to develop and implement out transit asset management (TAM) plans. TAM plans must include an asset inventory, condition assessments of inventoried assets, and a prioritized list of investments to improve the state of good repair of their capital assets. This final rule also establishes state good repair standards and four state of good repair (SGR) performance measures. Transit providers are required to set performance targets for their capital assets based on the SGR measures and report their targets, as well as information related to the condition of their capital assets, to the National Transit Database.

DATES: Effective October 1, 2016.

FOR FURTHER INFORMATION CONTACT: For program matters, Mshadoni Smith, Office of Budget and Policy, (202) 366–4050 or *Mshadoni.Smith@dot.gov*. For legal matters, Candace Key, Office of Chief Counsel, (202) 366–4011 or *Candace.Key@dot.gov*.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of Regulatory Action

This final rule establishes a National Transit Asset Management (TAM) System in accordance with section 20019 of the Moving Ahead for Progress in the 21st Century Act (MAP–21; Pub. L. 112–141 (2012), codified at 49 U.S.C. 5326).[1] A transit asset management system is "a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively through the life cycle of such assets." 49 U.S.C. 5326(a)(3).

Critical to the safety and performance of a public transportation system is the condition of its capital assets—most notably, its equipment, rolling stock, infrastructure, and facilities. When transit assets are not in a state of good repair, the consequences include increased safety risks, decreased system reliability, higher maintenance costs, and lower system performance.

Comprehensive quantitative information about the consequences of capital assets not being in a state of good repair is unavailable. However, insufficient funding combined with inadequate transit asset management practices have contributed to an estimated $85.9 billion transit state of good repair (SGR) backlog—a value derived from FTA's Transit Economic Requirements Model (TERM).[2] The SGR backlog is representative of the reinvestment cost to replace any transit assets whose condition is below the midpoint on TERM's 1 (poor) to 5 (excellent) scale, or 2.5. The SGR backlog poses a significant challenge during these fiscally constrained times, given FTA's estimates that an additional $2.5 billion per year above current funding levels from all levels of government is needed just to prevent the SGR backlog from growing.

The National TAM System is a scalable and flexible framework. The components of the National TAM System will work together to ensure that achieving and maintaining a state of good repair becomes, and remains, a top priority for transit providers, as well as States and Metropolitan Planning Organizations (MPOs).

B. Statutory Authority

Section 20019 of MAP–21 amended Federal transit law by adding a new section 5326 to Chapter 53 of title 49 of the United States Code. The provisions of 49 U.S.C. 5326 require the Secretary of Transportation to establish and implement a National TAM System which (1) defines the term state of good repair, (2) requires that all Chapter 53 recipients and subrecipients develop a TAM plan, (3) establishes annual reporting requirements, and (4) includes technical assistance. 49 U.S.C. 5326(b).

The Secretary also must establish SGR performance measures, and recipients must set performance targets based on the measures. 49 U.S.C. 5326(c)(1) and (2). Each designated recipient must submit two annual reports to the Secretary—one report on the condition of their recipients' public transportation systems, including a description of any change in condition since the last report, and another describing its recipients' progress towards meeting performance targets established during that fiscal year and a description of the recipients' performance targets for the subsequent fiscal year. 49 U.S.C. 5326 (b)(3) and 49 U.S.C. 5326(c)(3).[3]

C. Summary of Major Provisions

1. Transit Asset Management

This final rule adds a new part 625, "Transit Asset Management," to title 49 of the Code of Federal Regulations (part 625). This rule implements the several statutory requirements of 49 U.S.C. 5326(b) and (c), referenced in the previous section, by coalescing them into a comprehensive National TAM

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[1] On December 4, 2015, the President signed into law the Fixing America's Surface Transportation ("FAST") Act (Pub. L. 114–94), which supersedes MAP–21; however, FAST made no amendments to the transit asset management statute at 49 U.S.C. 5326. This notice will refer to MAP–21 throughout the preamble.

[2] Individual transit agencies were not involved in developing the assessment of the $85.9 billion state of good repair backlog. FTA developed the estimate by feeding combined data into TERM. TERM produces national-level estimates of the national state of good repair backlog, based on an underlying set of models relating the expected average true condition of an asset to the asset's age. Currently, FTA does not collect the systematic data necessary to do a detailed time-series analysis on whether the SGR backlog is growing in real terms. The $2.5 billion estimate is based on the 2013 Conditions and Performance Report, which uses a combination of National Transit Database, systematic and ad hoc data collections in combination with estimates produced by TERM. Under this final rule, FTA will collect additional data which will improve future estimates. The 2013 Conditions and Performance Report is available at *http://www.fhwa.dot.gov/policy/2013cpr/*.

[3] The term "designated recipient" is defined in statute as "(A) an entity designated, in accordance with the planning process under sections 5303and 5304, by the Governor of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 to urbanized areas of $200,000 or more in population; or (B) a State or regional authority, if the authority is responsible under the laws of a State for a capital project and for financing and directly providing public transportation." 49 U.S.C. 5302(4).

System. The National TAM System is comprised of the following five pillars: (1) The definition of "state of good repair," 49 U.S.C. 5326(b)(1); (2) a requirement that recipients and subrecipients develop TAM plans, 49 U.S.C. 5326(b)(2); (3) SGR performance measures, and a requirement that recipients and subrecipients set performance targets based on the measures, 49 U.S.C. 5326(c)(1) and (2); (4) annual reporting requirements for recipients and subrecipients, 49 U.S.C. 5326(c)(3); and (5) technical assistance from FTA. 49 U.S.C. 5326(b)(4) and (5). The elements of the National TAM System are listed in § 625.15.

Section 625.17 establishes basic principles of transit asset management and requires a transit provider to balance competing needs when considering the life-cycle investment needs of its assets. The disrepair of any particular asset within a public transportation system does not necessarily mean that other assets are in disrepair; whether an asset has achieved a state of good repair is an independent determination that would be made by each transit provider.

Sections 625.25 through 625.33 set forth specific requirements for TAM plans. Each transit provider that receives Chapter 53 funds as a recipient or subrecipient and either owns, operates, or manages capital assets used in the provision of public transportation, is required to develop and implement a TAM plan. A TAM plan is a tool that will aide transit providers in: (1) Assessing the current condition of its capital assets; (2) determining what the condition and performance of its assets should be (if they are not already in a state of good repair); (3) identifying the unacceptable risks, including safety risks, in continuing to use an asset that is not in a state of good repair; and (4) deciding how to best balance and prioritize reasonably anticipated funds (revenues from all sources) towards improving asset condition and achieving a sufficient level of performance within those means.

Section 625.25 lists the TAM plan requirements, including an asset inventory, condition assessments, a description of analytical processes or decision-support tools used to estimate and prioritize capital investment needs over time, and a project-based prioritization of investments. In general, an asset inventory must include all equipment, rolling stock, facilities and infrastructure that a provider owns. A provider may exclude from its asset inventory any equipment with an acquisition value of less than $50,000, unless the asset is service vehicle equipment. The inventory also must include all rolling stock (revenue vehicles), passenger stations, administrative and exclusive use maintenance facilities, and guideway infrastructure owned by a third-party and used by the provider in the provision of public transportation. The level of detail in a provider's asset inventory should be commensurate with the level of detail in its program of capital projects. A transit provider is required to conduct a condition assessment on all inventoried assets for which the provider has direct capital responsibility, and also set targets and develop a project-based prioritization of investments for those assets.

Section 625.27 requires States to develop a group TAM plan for all subrecipients under the Rural Area Formula Program, authorized under 49 U.S.C. 5311, including American Indian tribes. TAM plan sponsors, which include States, and designated and direct recipients, must develop group TAM plans for their tier II provider subrecipients, except those subrecipients that also are direct recipients under the Urbanized Area Formula Program authorized at 49 U.S.C. 5307. Tier II providers are those transit operators that do not operate rail fixed-guideway public transportation systems and have either one hundred (100) or fewer vehicles in fixed-route revenue service during peak regular service or have one hundred (100) or fewer vehicles in general demand response service during peak regular service hours. Tier I providers are those operators with one hundred and one (101) or more vehicles in revenue service during peak regular service or operators of rail fixed-guideway public transportation systems. Tier I providers must develop their own, individual TAM plan.

The group TAM plan approach is intended to reduce the burden on smaller transit providers of developing their own TAM plans and reporting to FTA's National Transit Database (NTD). A group TAM plan is subject to the same requirements for individual TAM plans. However, sponsors and participants should coordinate to determine their specific roles and responsibilities in complying with this rule.

Section 625.33 implements requirements for investment prioritization. Transit providers are required to rate state of good repair projects in order of priority. The investment prioritization requirements aid a transit provider in making more informed investment decisions to improve the state of good repair of its capital assets.

Sections 625.41 through 625.45 implement specific performance management requirements. Section 625.41 lists the objective standards for measuring the condition of capital assets. Section 625.43 establishes SGR performance measures based on the SGR standards. Section 625.45 requires recipients and subrecipients to set one or more performance targets per asset class based on the SGR measures and also requires transit providers to coordinate with States and with Metropolitan Planning Organizations (MPOs), to the maximum extent practicable, in the selection of State and MPO performance targets.

Together, these requirements allow transit providers to better assess their SGR needs, and in turn make more informed investment decisions. The coordination amongst transit providers, States and MPOs should influence MPO and State transportation funding investment decisions and is intended to increase the likelihood that transit SGR needs are programmed, committed to, and funded as part of the planning process.

Section 625.55 requires transit providers to report their targets and the condition of their capital assets annually to FTA's NTD. This data both helps FTA better estimate the Nation's SGR backlog and supports the need for additional funding at all levels of government to maintain, improve, and replace the Nation's aging transit capital assets.

2. National Transit Database

This final rule amends the regulations for FTA's National Transit Database (NTD) at 49 CFR part 630, to conform to the reporting requirements for the National TAM System. Previously, the scope of 49 CFR part 630 was limited to implementing the reporting mandate at 49 U.S.C. 5335(b) for recipients and beneficiaries of section 5307 urban formula funds and section 5311 rural formula funds to report to the NTD. Under this rule, FTA has aligned 49 CFR part 630 with the requirements found at 49 U.S.C. 5326(c)(3) that require recipients of Federal financial assistance under 49 U.S.C. Chapter 53 that own, operate, or manage capital assets used in the provision of public transportation to report their performance targets and their progress towards meeting those targets to the NTD. Under this rule, recipients that receive neither Urbanized Area Formula funds (49 U.S.C. 5307) nor Rural Area Formula funds (49 U.S.C. 5311) remain excluded from other NTD reporting requirements that are unrelated to transit asset management.

D. Summary of Costs and Benefits

TABLE 1—SUMMARY OF THE FINAL RULE'S BENEFITS AND COSTS

[$ Millions][4]

	Low cost case			High cost case		
	Undiscounted dollars	Discounted at 7% discount rate	Discounted at 3% discount rate	Undiscounted dollars	Discounted at 7% discount rate	Discounted at 3% discount rate
Quantified Costs (20 years)	449	246	338	868	471	652
Quantified Costs Annualized	22.5	23.2	22.8	43.4	44.5	43.8
Unquantified Costs	• Additional asset maintenance, rehabilitation and replacement. • Costs of inventory and assessment for non-revenue vehicles and for equipment, administrative buildings, and parking facilities that are not part of a station or maintenance facility. • Other third party assets not reported to NTD.					
Qualitative Benefits	• Reduced operation and maintenance costs and/or reduced lifecycle costs of asset ownership. • Reduced mechanical breakdowns and other improvements to transit system performance, reliability and safety.					

The costs benefits analysis includes both qualitative and quantitative components and is designed to provide information about the likely impacts of the final rule at the societal level. FTA estimated the costs and benefits of the final rule by using Bureau of Labor Statistics studies and through dialogue with transit providers. Due to the limited number of quantitative resources, many of the estimated impacts are based on explicit assumptions that are outlined in section III of this notice. As described in section III, both low case and high case estimates were calculated based on in-house versus contractor estimated costs.

According to Government Accountability Office (GAO) reports and other studies, existing practices in transit asset management vary widely from transit provider to transit provider, though most providers already perform at least some of the functions required under the final rule. FTA estimated the costs of the final rule based on the incremental time that it will take a transit provider's staff to fulfill each of the National TAM System requirements, deducting the costs of the transit industry's current practices. Where relevant, the estimates are associated with the size of a transit provider's asset portfolio, as reported in the NTD. FTA monetized the time requirements using average wage rates from relevant job categories, as reported by the Bureau of Labor Statistics in 2015, and adjusted for employee fringe benefits.

Table 1 includes a summary of the estimated costs of the National TAM System. The quantified costs are for transit providers to assess their assets, develop TAM plans, and report certain information to the NTD. They do not include any incremental costs related to asset replacement, rehabilitation or maintenance—those costs are presented in the table as unquantified costs. FTA was also unable to estimate costs for assessing the condition of equipment that is not located at maintenance facilities or passenger stations or facilities not reported to NTD. The analysis covers a period of twenty years following the effective date of the final rule. Under the low cost case, the total undiscounted costs for the twenty years are $449 million. Using a discount rate of 7% (with 3% sensitivity case) for future values, the final rule has annualized costs of $23.2 million.

Under the high cost case, if all the tasks are contracted out by the transit agencies or States, rather than performed in-house, the cost of the final rule will be roughly double the estimated in-house cost. The total undiscounted costs for the twenty years are $868 million. Using a discount rate of 7% (with 3% sensitivity case) for future values, the final rule has annualized costs of $44.5 million.

The initial costs for collecting data and developing new methodologies will be just over $62 million spread over the first two years, followed by reduced amounts in subsequent years under the low cost case. Under the high cost case, initial costs will be approximately $115 million over two years. FTA expects that the benefits of the final rule will stem from improved maintenance practices and from improved decision-making in capital asset maintenance and replacement. By identifying and prioritizing state of good repair needs, a transit provider could reduce costs for mechanical breakdowns of transit vehicles, reduce travel delays for passengers, and yield potential safety improvements. For some providers, this may be feasible by shifting priorities within their maintenance budgets. For example, by identifying slow zones where deteriorated asset conditions have reduced system travel speeds, transit systems may assign maintenance efforts towards repairs that will eliminate the slow zone and ensure consistent and reliable travel times for passengers. For other providers, this may be accomplished through proactive replacement of capital assets. For example, rather than operating buses until they become unreliable in old age, some transit providers will now establish a consistent replacement age for their buses that will prevent costly in-service breakdowns.

Some providers may need additional funding to more effectively maintain their capital assets. To increase funding for maintenance, providers may, need to reduce expenditures for system expansion, particularly if the agencies' goal is to reduce the SGR backlog. Additionally, assembling a quantitative asset inventory and condition assessments will better equip transit providers to make the case to funding stakeholders for how much money is needed to bring their systems into a state of good repair. However, it is difficult to predict accurately how each provider is likely to respond.

The final rule's benefits could not be quantified due to the lack of available information on the impacts of asset management programs on transit systems. Instead, FTA conducted a breakeven analysis based on the incidence of transit vehicle mechanical breakdowns reported to NTD and their associated costs. For instance, in 2013, 524,629 mechanical failures of vehicles in service were reported to the NTD, and a total of $2.2 billion in vehicle maintenance costs were reported to the NTD. Assuming that in the absence of the rule, vehicle maintenance costs in each of the next 20 years are the same as they were in 2013, the final rule would need to avoid 1.02% or 1.95% of the mechanical failure breakdowns each year to yield savings that are equal to the portion of the rule's costs that FTA was able to monetize, in the low and high cost cases, respectively. For the rule's benefits to equal all of its costs, it would need to prevent a larger but unknown amount of vehicle maintenance costs. The full methodology for the low and high cost cases are described in the Regulatory Analysis section.

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[4] Cost estimates are sensitive to the extent agencies use in-house or contractor staff to conduct compliance activities. If all compliance activities are contracted out by the transit agencies or States, rather than performed in-house, the cost of the final rule will be roughly double the estimated in-house cost.

Current management practices may delay maintenance of vehicles due to various reasons. For instance, some providers may keep vehicles in operation to meet the current demand, delaying regular maintenance of vehicles, resulting in mechanical failure of vehicles in service. Others may shortchange maintenance budgets to expand their systems. In each case, providers struggle to meet system demands with limited resources.

Implementing a TAM system will require a provider to collect and use asset condition data, set targets, and develop strategies to prioritize investments to meet the provider's goals. One strategy may be to ensure that assets are maintained on a regular schedule to avoid failure of vehicles in service, which are expensive to manage and cause delays on the system. Based on limited findings on transit asset management-related cost savings from transit provider initiatives and from the literature in other transportation fields, notably highways, this level of improvement appears readily achievable. Additionally, there will be important non-quantifiable benefits in areas such as improved transparency and accountability.

II. Summary of Notice of Proposed Rulemaking (NPRM) Comments and Responses

A. Rulemaking Background

On October 3, 2013, FTA published a consolidated advance notice of proposed rulemaking (ANPRM) requesting public comment on a wide range of topics pertaining to the Public Transportation Safety Program and the TAM program authorized by MAP 21. 78 FR. 61251 (Oct. 3, 2013). Throughout the ANPRM, FTA expressed its intention to adopt a scalable and flexible approach to transit asset management and safety and highlighted the inherent linkages between asset condition and safety performance.

On September 30, 2015, FTA published a Notice of Proposed Rulemaking (NPRM) for Transit Asset Management and the National Transit Database (80 FR 58911). The NPRM provided a summary of the status of the Nation's state of good repair backlog and the history behind FTA's proposals for the National TAM System. FTA took into consideration public comments it received in response to the ANPRM and NPRM during the development of this final rule.

FTA received a total of 119 public comments on the NPRM. In general, FTA has not responded to those comments that related specifically to other rulemakings. Several commenters requested an extension to the comment period. FTA did not extend the comment period, but did accept late filed comments. A couple of comments suggested that FTA provide an opportunity for States and others to offer additional comments after FHWA and FTA issue all of the performance management-related NPRMs. FTA will continue to engage with the States, transit agencies and other members of the public on the implementation of its programs and requirements. The public can also submit questions or comments at any time to FTA's Web site at *http://ftawebprod.fta.dot.gov/ContactUsTool/Public/NewRequest.aspx.*

A number of comments requested guidance from FTA on how to implement the requirements of the proposed rule. The Transit Asset Management page on FTA's Web site at *www.transit.dot.gov/regulations-and-guidance/asset-management/transit-asset-management* contains a number of useful guidance documents and resources. For example, FTA has developed an Asset Management Guide for Small Providers [5] to assist small providers and States' Department of Transportations in developing TAM plans. FTA encourages transit providers and sponsors to visit the page regularly to access the most up-to-date resources.

Following is a summary of the public comments on the NPRM and FTA's responses.

B. General Comments and FTA's Responses

This section provides summarized comments that are not specifically related to a section of the NPRM. This section is organized around common themes found in the responses to the NPRM such as, FTA's approach to implementing the TAM requirements, Nexus between state of good repair and safety, Nexus between transit asset management and planning, responses to the NPRM appendix that provided examples of asset classes and individual assets, Implementation and Oversight, and Technical assistance needs.

COMMENTS: FTA's Approach to Implementing the TAM Requirements

Some commenters expressed general support for FTA's efforts to use transit asset management to help transit providers maintain bus and rail systems in a state of good repair (SGR). A State agency expressed support for FTA's efforts to increase safety through the NRPM. A transit operator emphasized that investments to resolve the SGR backlog must be guided by a plan that emphasizes the goals stated for the TAM program.

However, a few commenters expressed general concern about the proposal. For example, although supporting the idea of a National TAM System, one commenter urged that the implementation be directed towards bringing the nation's transit system into a state of good repair, rather than creating reporting and oversight requirements that have no relation to this goal. A transit operator expressed concern that the guidance prescribed in the NPRM could require transit providers already mature in TAM best practices to alter their programs, which could result in compliant but less optimal TAM programs. An anonymous commenter said the rule must be kept as simple as possible.

FTA'S RESPONSE: FTA's Approach to Implementing the TAM Requirements

FTA appreciates those comments in support of its efforts to implement a National TAM System to achieve and maintain a state of good repair for the Nation's transit assets, improving transit safety, and increasing service reliability and performance. FTA agrees that transit providers should be guided by the goals of the National TAM System in using their funding from all sources for state of good repair.

Throughout the NPRM, FTA expressed its intention to adopt a scalable and flexible approach to transit asset management and safety. This final rule sets minimum Federal requirements that can be adopted by any transit provider and tailored to any transit system.

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[5] *https://www.transit.dot.gov/research-innovation/asset-management-guide-small-providers-fta-report-no0092.*

COMMENTS: Nexus Between State of Good Repair and Safety

Several transit operators, a business association, and other commenters recommended that FTA clarify the interaction between TAM and safety, expressing concern that failure to do so could subject transit agencies to unnecessary litigation risk. These commenters suggested that Useful Life Benchmarks (ULBs) should not drive replacement cycles to the exclusion of safe operations and asserted that the safety of any asset should be the determining factor in prioritization of asset replacement. For similar reasons, a professional association argued that SGR and safety should not be tied together and urged FTA not to use SGR and safety reporting as a methodology for awarding or not awarding funding to transportation agencies. A transit operator stated that operator experience, training, and prudence play a more critical role in life safety than asset condition. This commenter suggested that it would be more prudent to have a separate safety flag that identifies any asset that poses an "imminent danger" to an operator or passenger with specific guidelines for the management of such assets.

Although acknowledging that consideration for safety in asset management decisions is important, one transit operator stated that there should not be a direct measurable link to safety performance because that determination would require greater innovation in integrating safety and asset management systems. Further, this commenter stated that it is difficult to assess the link between safety and asset management because it is not a direct relationship.

A local transit operator suggested that FTA provide documentation and guidance on how to integrate SMS directly into TAM plans. Further, this commenter suggested that FTA allow each individual transit provider to make their own determinations about the safety of their assets.

A State transit association expressed concerns about the viability of a top-down approach, stating that it may conflict with already-negotiated union contracts or hinder future negotiations. The commenter stated that, rather than the overly burdensome SMS and TAM plan requirements, a National Transit Institute (NTI) course with appropriate certification(s) could achieve the same goals and outcomes. In contrast, one transit operator concurred with FTA that MAP–21 requirements for a National TAM System can best be implemented within the context of an SMS framework imposed by the overarching Public Transportation Safety Program.

Another transit operator and an individual commenter expressed concern that because FTA has not published a final National Public Transportation Safety Plan, it is difficult to address issues in the TAM NPRM that pertain to the linkage between the two documents. A transit operator expressed concerns about the identification of unacceptable safety risks in safety plans and TAM plans, reasoning that public access to this information may increase safety risks for the rail system.

An individual commenter said a National TAM System will significantly affect the efficiency and cost-effectiveness of capital asset management and maintenance. The commenter said it also will help to improve transit safety. A State agency and a transit operator also agreed with FTA's statements on the linkages between SGR and safety.

A transit operator recommended that part 625 should reference part 670 and "prioritize" the significance that safety plays in determining SGR.

FTA'S RESPONSE: Nexus Between State of Good Repair and Safety

FTA believes that Congress intended for it to establish a National TAM System that not only increases the performance and reliability of capital assets, but also "improve[s] safety."[6] For example, pursuant to 49 U.S.C. 5329(b)(2)(B), FTA must develop and implement a new National Public Transportation Safety Plan that includes the definition of state of good repair developed under this final rule. Additionally, pursuant to 49 U.S.C. 5329(d)(1)(E), a transit agency safety plan must include performance targets based on the SGR measures that will be included in a National Safety Plan.

The final rule reflects FTA's recognition of the nexus between transit asset management and safety. While asset condition is not always a contributing factor in safety events, FTA believes that there is a relationship between the condition of an asset and safety performance. FTA acknowledges that a transit asset that is in a state of good repair may be operated unsafely; conversely, a transit asset that is not in a state of good repair may be operated safely through appropriate safety risk mitigation strategies.

FTA's approach to TAM is consistent with its proposed SMS approach to safety. A fundamental aspect of transit asset management is the monitoring of asset condition data as an indicator of system performance. Similarly, SMS is a formal data-driven approach to managing safety risk and assuring the effectiveness of safety risk mitigations. SMS does not require a provider to take a specific action be taken to address a specific safety risk. Implementing SMS merely provides an organization with a systematic way to identify and understand safety risks, and subsequently make a determination about how to mitigate those risks.

The requirements of this final rule can be implemented in the absence of the components of the National Safety Program referenced in the comments. Again, this final rule is scalable and flexible. The final rule neither defines nor prescribes standards for "unacceptable safety risk." FTA believes that each provider is in the best position, based on knowledge of both its unique operating environment and availability of resources, to make determinations regarding categorization and mitigation of risks. The final rule merely requires that a transit provider give due consideration in its investment prioritization to those assets that pose an identified unacceptable safety risk.

FTA does not agree with the commenter who suggested that public access to those safety risks that may be identified in a TAM plan or safety plan, may increase safety risks for the rail system. FTA did not propose in the NPRM that a transit provider document its safety risks in its TAM plan. In determining the state of good repair of an asset, FTA proposed that a provider consider whether or not the asset poses an identified unacceptable safety risk and that a provider considers those risks in the development of its investment prioritization.

This final rule allows a transit provider to determine its own ULBs, based on knowledge of its operating environment and the performance of its individual assets. Each transit provider will need to determine what investments should be made in order to improve the performance of its transit system.

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[6] H.R. Rep. No. 112–557 at 603 (2012) (Conf. Rep.). In addition, the text of the Public Transportation Safety Act of 2010 was incorporated into both the transit asset management and safety provisions of MAP–21. *See* S. 3638, 111th Cong. (2010). In the report accompanying the 2010 Act, Congress stated that "state of good repair directly relates to the safety of a public transportation system, as the likelihood of accidents increases as the condition of equipment and infrastructure worsens." S. Rept. 112–232 at 10 (2010). The requirements proposed under the Act were intended to establish a "monitoring system for the safety and condition of the nation's public transportation assets." *Id.* at 1.

FTA understands the uncertainty expressed by some commenters regarding the nexus between transit asset management and safety. FTA also understands the uncertainty expressed in those comments regarding compliance with the requirements of the final rule that are related to safety, in the absence of a final National Public Transportation Safety Plan and a final rule for public transportation agency safety plans.

On February 5, 2016, FTA issued a proposed National Public Transportation Safety Plan (81 FR 6372–3) and a notice of proposed rulemaking (NPRM) for Public Transportation Agency Safety Plans (Agency Safety Plans). 81 FR 6344–71. The proposed rule for Agency Safety Plans would require transit agencies to set performance targets based on the safety performance criteria under the National Safety Plan. FTA proposed one criterion to measure the relationship between asset condition and safety performance. The proposed Agency Safety Plan rule also would require a transit operator to establish methods for identifying and evaluating safety risks throughout all elements of its public transportation system, including its capital assets. In the coming months, FTA plans to issue both a final National Safety Plan and a final rule for Agency Safety Plans and accompanying guidance, technical assistance and other tools for both safety and TAM.

COMMENTS: Nexus Between Transit Asset Management and Planning

A Metropolitan Planning Organization (MPO) commented that States and MPOs must consider and integrate transit providers' TAM plans and targets, as well as Transit Agency Safety Plans and targets, into the planning process, including decision-making on funding allocations and prioritization of investment strategies. A State DOT stated that consistency between FTA's and Federal Highway Administration's (FHWA's) TAM final rules is necessary and that State DOTs should be given flexibility to choose a phase-in option for the development of its first initial asset management plan and targets.

Several State DOTs said FTA should promote more definitive language for how TAM plans will feed into long- and short-range transportation planning and programming. Some commenters said the investment prioritization approach must be relevant to the existing planning and programming process without supplanting the statewide transportation improvement program (STIP) project selection process and capital programming processes.

One commenter requested clarification on the relationship between TAM plans and their future impacts on the development of Regional Transportation Plans. A transit operator said the proposed rule is written as if the National TAM System and TAM Program start at procurement and there is little to no mention of planning, requirements gathering, concept of operations, and hazard avoidance, which are central to true whole life-cycle management and SMS concepts.

FTA'S RESPONSE: Nexus Between Transit Asset Management and Planning

The NPRM did not propose that a transit provider abandon its existing capital planning program and the TAM requirements are not intended to supplant the capital planning process. This final rule is a baseline. The TAM requirements are intended to produce information critical to informed, sound decision-making for capital asset lifecycle investment needs. FTA understands that there may be other processes, considerations, or concepts that are not explicitly referenced in the rule, but may be central to a transit provider's implementation of a comprehensive TAM program. FTA believes that a transit provider could incorporate these other elements into its TAM plan through several of the requirements at § 625.25(b), specifically:

1. The SGR policy;
2. The TAM plan implementation strategy; and
3. An outline of how the TAM plan and related business practices will be monitored, evaluated and updated, as needed, to ensure the continuous improvement of transit asset management practices.

FTA acknowledges that compliance with the requirements for metropolitan planning will not become effective until the publication of the final TAM rule that establishes the SGR performance measures. Therefore, in the final rule on metropolitan and statewide and nonmetropolitan planning, FTA and FHWA have provided a phase-in of certain requirements to support States, MPOs and transit providers as they transition into performance-based planning and programming. FTA directs commenters to the Final Rule on Metropolitan and Statewide Planning and Non Metropolitan Planning[7] where State and MPO integration of transit providers' TAM plans, targets, and investment priorities into the performance-based planning and programming process are addressed.

COMMENTS: Appendix A: Examples of Asset Categories, Asset Classes, and Individual Assets

One commenter supported FTA's approach in Appendix A. However, a professional association and several State DOTs recommend that either Appendix A be removed from the final rule, or that the content included in Appendix A be replaced with asset categories and asset classes required for reporting to the NTD in order to align the two processes and keep reporting to a minimum. If Appendix A is retained, several of these commenters recommended that FTA either remove "Administration" assets from Appendix A or amend its definition to clarify what falls under the class of assets known as "Administration."

A professional association and a couple of State DOTs asked if the asset category infrastructure is only applicable to fixed guideway. Based on Appendix A, a couple of State DOTs said it is unclear whether FTA envisions that office equipment and vehicle related equipment (such as bus cameras) or shop equipment (*e.g.*, vehicle lifts, fueling and lubricating fuel dispensers, test equipment, etc.) would be included in a TAM plan.

A local government recommended that FTA delineate furniture and fixtures as an asset class or individual asset that is not applicable when categorizing under TAM. The commenter also suggested that FTA clarify that TAM is not a replacement for, nor should be confused with, the standard generally accepted accounting principle fixed asset categories such as Buildings, Leasehold Improvements, Land, Furniture and Fixtures, Technology, etc. Rather it is an extension or categorization of transit capital assets within the limited scope of TAM in improving safety, reliability, and performance of our nation's public transportation; thereby reducing the SGR backlog.

An individual commenter asked if FTA will provide a cross reference from Appendix A—Asset Classification in the TERM Lite Quick Start User Guide—to the Asset Category/Asset Class in Appendix A in the rule.

A transit operator stated that, in lieu of the categorizations as proposed for Appendix A, and associated definitions throughout the rule, it would support a system of asset categories and classes that is consistent with the one described in Table 2.9 in Transit Cooperative Research Program (TCRP) Report 172, "Guidance for Developing a Transit

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[7] *https://www.federalregister.gov/articles/2016/05/27/2016-11964/statewide-and-nonmetropolitan-transportation-planning-metropolitan-transportation-planning.*

Asset Management Plan," which also aligns more closely with the asset aggregations used in the TERM model. Another transit operator suggested that Appendix A should align with the corresponding table in FTA's 2012 Asset Management Guide because proposed Appendix A deviates from past FTA sanctioned practices and would likely disrupt systems already in use without improving the quality of data obtained. An MPO asked FTA to clarify the detail expected in Appendix A when a TAM plan is prepared as part of a group TAM plan by a State versus when prepared by the individual transit provider.

FTA'S RESPONSE: Appendix A: Examples of Asset Categories, Asset Classes, and Individual Assets

FTA included Appendix A in the NPRM to provide an illustrative example of an asset hierarchy. FTA did not intend for Appendix A to serve as an exhaustive list of asset classes and individual assets. Appendix A did not include systems as a separate asset category because systems would fall under the infrastructure category. Each asset category in the final rule is broad enough for a transit provider to incorporate its existing defined categories. Components of an asset, such as bus cameras or shop equipment, would be itemized in the asset inventory at the level of detail found in a transit providers program of capital projects. Specifically, with regard to the equipment asset category, the only assets that a provider must include in its inventory are non-revenue service vehicles and owned equipment over $50,000 in acquisition value. Additionally, equipment assets considered under the SGR performance measure and reported to NTD are exclusively non-revenue service vehicles. The equipment asset category does not include supplies, such as trash bins or pencils. A transit provider is not required to include any third-party equipment in its asset inventory. Also, see FTA's response to comments on "Capital Asset" and "Equipment" in § 625.25 Definitions.

The infrastructure asset category includes infrastructure assets for all modes. However, FTA proposed that the performance measure for infrastructure be limited to rail fixed-guideway assets. Therefore, a transit provider that does not operate a rail system would not have to set a performance target for its non-rail infrastructure assets. Similarly, the performance measure for equipment is limited to non-revenue service vehicles, and a transit provider is only required to set an equipment target for service vehicles. However, all other owned equipment over $50,000 must be included in a TAM plan. The asset inventory compiled for a transit provider's own TAM plan, particularly a rail transit provider's TAM plan, may have a greater level of detail than the inventory information reported to the NTD.

COMMENTS: Implementation and Oversight

Two commenters suggested that the oversight of the asset management reporting requirements should occur as part of a regularly scheduled oversight activity and existing programs, such as the triennial oversight program. One of these commenters encouraged FTA to set forth criteria that would prompt an as-needed asset management review, ensuring that reviews are triggered based on quantifiable criteria and defined risk, rather than on an arbitrary basis. Another commenter assumed that audit and compliance checks will be done during the triennial review because it was stated at the FTA webinars supporting the issuance of the NPRM that the TAM plans would not be submitted to FTA. The commenter requested that FTA clarify the audit and compliance verification of TAM plans in the final rule. One commenter expressed concern about FTA's assertion that it reserves the right to conduct additional oversight of TAM plans outside the triennial review process. A State DOT asked for FTA's determination of whether the National TAM System will be part of Satisfactory Continuing Control or Maintenance as it relates to the triennial review.

Several commenters said the rule should state how individual and group TAM plans will be reviewed and approved. A professional association said FTA should explicitly state that for rail fixed guideway systems, the State Safety Oversight Agency has a review and approval role.

Some commenters recommended that FTA further engage stakeholders with regard to implementing the rule. A State DOT suggested that FTA conduct a survey of all data requirements from the user level to determine if there is a way to coordinate and consolidate the process. A transit operator said FTA should consider providing an opportunity for a small delegation of transit providers to have a face-to-face dialogue to discuss concerns with the NPRM. A transit operator said there should be no additional changes to add more specific requirements in the final rule beyond those included in the NPRM, without another opportunity for the transit industry to review and comment.

FTA'S RESPONSE: Implementation and Oversight

FTA will not routinely collect or approve TAM plans. Individual transit providers, and sponsors on behalf of group TAM plan participants, must self-certify their compliance with the requirements of the final rule. FTA will consider developing a self-assessment tool as part of its technical assistance efforts. FTA intends to oversee self-certifications of TAM plans through the existing Triennial Review and State Management Review (SMR) processes, likely through the addition of a TAM module. FTA continues to reserve the right to conduct additional oversight of any of its requirements, including those related to TAM, outside of the Triennial Review and SMR processes.

FTA fully appreciates the role that State Safety Oversight (SSO) Agencies play in the safety of rail fixed guideway transit systems. FTA supports a rail transit provider's decisions to further align its safety program with its TAM program by seeking review and approval of its TAM plan by its SSO Agency. However, the final rule does not require SSO Agencies to review and approve the TAM plans of the rail transit systems that they oversee.

FTA has provided a number of opportunities for the public to comment on its approach and proposals on transit asset management. In addition to the ANPRM and NPRM, FTA sponsored several SGR roundtables, conducted an online dialogue, and issued a Transit Asset Management Guide. FTA will continue to engage with the industry on the implementation of both the TAM and safety requirements.

COMMENTS: Technical Assistance Needs

Several commenters provided statements concerning a potential template for TAM plans. A transit operator asked if FTA will issue a template that service providers can use to assure they are providing all required information FTA requires in an acceptable format. One commenter said FTA should offer technical assistance for tier II providers, or work with tier II stakeholders, to create TAM plan templates for smaller agencies and/or group TAM plans. Another commenter supported the idea that the State DOT and other sponsoring agencies develop one TAM plan template, but expressed concern about DOT's lack of adequate resources to develop a template, provide oversight, track assets and provide NTD reports on SGR and asset management.

Several commenters said FTA should provide training on the use of TERM and the TERM scale for State DOTs and subrecipients prior to inclusion of facilities in the TAM plan.

A couple of commenters said FTA could provide assistance to those transit agencies that are new to asset management by publishing a sample definition of an asset. One of these commenters also said FTA should provide a toolkit as part of the final rule.

Some commenters asked for technical assistance from FTA on the following specific topics:

1. Decision processes and tools for assessing probability of risks.
2. SGR backlog calculation.
3. Developing quality and cost-effective condition assessments.
4. The new reporting requirements.

One commenter requested that FTA engage in a comprehensive asset management technical assistance effort as soon as the final rule has been published.

FTA'S RESPONSE: Technical Assistance Needs

FTA appreciates the recommendations for technical assistance tools. FTA's suite of TAM technical assistance tools will include one or more TAM plan templates, guidance or training for TERM, and guidance for performance measurement. Currently, the 2012 TAM Guide is FTA's primary guidance on transit asset management. It combines previous research, case studies, lessons learned from other FTA initiatives, and best practices.

COMMENTS: Additional Comments

A couple of commenters said FTA should ensure consistency between FTA and FHWA transportation asset management rulemakings.

One commenter said FTA should clarify to what degree the new asset management framework is potentially displacing local agency decision-making. The commenter said it has been a long-standing understanding that FTA will not substitute its judgment for that of its grantees, and final decisions on the allocation of both Federal and local funds should still rest with the implementing agency, not an entity operating at the national level.

Another commenter urged FTA to consider and request comments on adding governance metrics to the TAM rule that would permit external stakeholders to understand the challenges faced by individual agencies in balancing their capital and operating needs, and to identify agencies exerting insufficient effort in prioritizing SGR projects. For example, the commenter suggested that the following metrics might be appropriate: Available capital funding per transit asset; available capital funding per cumulative annual passenger trip; and proportion of capital budget appropriate to SGR projects.

An individual commenter asserted that the proposed rule's failure to address public transportation's human capital assets is a missed opportunity to address the high risks to both safety and performance that have resulted from the sector's failure to take a more strategic and systematic approach to acquiring, developing, and retaining individuals with needed skills. This commenter urged FTA to incorporate into the National TAM System requirements that would ensure the collection and reporting of basic workforce data, and provided specific suggestions of human resources performance data to collect.

FTA'S RESPONSE: Additional Comments

The FHWA and FTA asset management statutes are not identical; therefore the requirements under each agency's asset management rule will be different. However, the purpose of both rulemakings is to improve the condition of the Nation's transportation assets. Another rulemaking effort, the coordinated FHWA and FTA Metropolitan and Statewide and Non-Metropolitan Transportation Planning, will implement a performance-based approach to planning and programming (PBPP). This final rule supports the PBPP framework by requiring transit providers to share their TAM plans with their State and MPO planning partners and to coordinate with States and MPOs in the selection of State and MPO targets.

The requirements of the final rule do not displace local agency decision-making. The requirements of the final rule do not limit a transit provider from implementing additional TAM provisions, activities, and metrics. The final rule's information gathering, analysis, and prioritization requirements are intended to inform the local decision-making process.

FTA recognizes that human capital assets are an essential component of implementing a TAM plan; however they do not meet the statutory definition of "capital asset." In the NPRM, FTA proposed that a tier I provider develop a nine element TAM plan, and has maintained this requirement in the final rule. One of the nine elements was a specification of resources, including personnel needed to develop and implement the TAM plan.

C. Section by Section NPRM Comments and FTA's Responses

This section provides summarized comments by NPRM section, FTA's responses, and changes made in the final rule.

Section 625.1 Purpose

This section proposed that the purpose of these regulations is to carry out the mandate of 49 U.S.C. 5326 for transit asset management.

COMMENTS:

A few commenters expressed support for the Federal objectives for the National TAM System laid out in proposed § 625.1. A transit operator asked if FTA has considered using the ISO 55000 framework to accomplish this mandate.

FTA'S RESPONSE:

Prior to MAP–21, FTA began researching transit asset management and developing TAM policies and best practices for the transit industry. FTA reviewed a number of resources prior to developing the NPRM, including the international asset management standard established by ISO. FTA believes that this final rule sets forth a flexible approach to implementing transit asset management that is consistent with current best practices.

FINAL RULE:

FTA is including this section in the final rule without change.

Section 625.3 Applicability

This section proposed that the regulations would apply to all transit providers that: (1) Are recipients or subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53; and (2) own, operate, or manage transit capital assets.

COMMENTS: Applicability—Assets Maintained, Owned, or Operated by a Third-Party

Many public comments addressed the applicability of the rule to contractor assets. Numerous local transit operators, several State DOTs, and other commenters asserted that a third party contractor's assets should not be required to be included in a provider's TAM plan. Some of these commenters suggested that this is a matter of contract administration and a transit provider should determine how they will approach the issue of the condition of a contractor's assets based on the nature of each individual contract. A private company in supply of transit assets recommended that assets other than rolling stock that are fully owned by a private contractor (*e.g.*, tools and diagnostic equipment) should not be incorporated into TAM asset inventory. In contrast, one State DOT expressed support for the applicability of TAM performance targets to a transit provider's leased assets and assets operated under a service contract.

Two transit operators and an MPO pointed out that in some instances a contractor may be providing services to several transit agencies using the same assets or multiple transit agencies may share an intermodal terminal, and it is unclear which agency would be responsible for collecting condition information and reporting of those shared assets. For this reason, the MPO commented that overlapping reporting of the same assets by different agencies would cause reconciliation issues, unnecessary data collection costs, and unnecessary coordination issues to ensure consistency in asset representation. Also relating to shared assets, a transit operator expressed concern that the transit provider has no control over the maintenance schedule; repair or replacement of contractor owned assets and suggested that each transit provider should be allowed to determine which assets to include in its TAM plan. For similar reasons, two transit operators and a business association recommended that capital assets outside a transit operator's control—such as passenger stations maintained by station cities, track owned and maintained by freight railroads used under shared-use agreements, or a building for which a transit agency is leasing a portion—should not be included in the agency's TAM plan.

Some commenters asked whether assets owned by a third party contractor and used in the provision of public transportation service (*e.g.*, vehicles owned by third party paratransit provider, maintenance facilities where contractor-owned buses are stored and maintained) must be included in a recipient's asset inventory. A transit operator asked if space it leases for its administrative offices needs to be included in its TAM asset inventory. Two transit operators asked if taxicabs and other vehicles occasionally used to provide paratransit service pursuant to the Americans with Disabilities Act (ADA) should be included in the TAM asset inventory. If so, one of these commenters requested that FTA provide an explanation in the final rule as to how an agency would decide which vehicles to include. Commenting that a transit provider has little control over which assets are used by a third-party provider, a transit operator asked if rolling stock that is used intermittently through third-party providers would be included in the TAM plan.

A transit operator expressed concern that condition assessments for assets maintained by its contractual partners may be considered proprietary information that the private carriers are not willing to share due to liability issues. A local transit provider asked how FTA would suggest an agency impose and monitor more stringent safety/SGR investment standards to third party providers that have a service contract for asset maintenance and/or operation. Several State DOTs and another commenter recommended that leased assets that otherwise would be required to be included in a TAM plan should not be included unless the lease is for a minimum of 5 years.

A State DOT asked whether a non-profit agency providing specialized transportation service to complement a subrecipient's service would need to include all of its vehicles in a TAM plan or only those vehicles that is leases from the subrecipient.

If the assets of a contracted service provider do fall under a transit agency's asset inventory for purposes of TAM plan requirements, a transit operator recommended that FTA allow for a transition period for contracted services in which existing contracts can be modified or new contracts can be bid and awarded to accommodate the new requirements. This commenter also expressed concern that the introduction of TAM requirements into service contracts would increase contract costs without meaningfully improved service, and in some cases could lead to service reductions as a result of contracted cost increases.

An MPO suggested that, if FTA is interested in getting the full picture of an agency, it could require reporting of the shared, leased, and contracted assets that are directly used by the agency, but at a very basic level and that the non-owners should be exempted from the performance metrics for these assets. As an alternative to reporting leased and contracted assets, this commenter suggested that FTA could request that agencies meet the performance requirements of leased and contracted assets by including language regarding compliance with FTA's SGR performance standards in the agency's contracts with vendors.

A transit operator commented that a tier I provider should not be required to include assets used and maintained by other tier I providers as part of its TAM asset inventory. An MPO requested guidance from FTA on how and which TAM plan(s) should incorporate capital assets that are collectively purchased and collectively maintained by a regional authority.

FTA'S RESPONSE: Applicability—Assets Maintained, Owned, or Operated by a Third-Party

The applicability of the requirements proposed in the NPRM was consistent with FTA's analysis of the SGR backlog and with current NTD reporting requirements. The Nation's $85.9 billion SGR backlog is a value derived from FTA's TERM, which is based on a comprehensive assessment of the Nation's transit capital stock reported to the NTD, including those assets that are owned by third parties.

FTA agrees with commenters who suggested that requiring the inclusion of contracted assets in a TAM plan may be difficult to implement and may prove to be overly burdensome and costly. However, the agency continues to believe that a TAM plan should, to a certain extent, take into account these types of assets. Thus, in this final rule, FTA has attempted to strike a balance between these concerns.

This final rule requires that a transit provider include in its asset inventory all equipment, rolling stock, facilities, and infrastructure that it owns. A provider may exclude from its asset inventory any equipment with an acquisition value of less than $50,000, unless the equipment asset is a service vehicle. A transit provider must only include in its asset inventory third-party owned, or jointly-procured rolling stock, passenger stations, administrative and exclusive-use maintenance facilities, and guideway infrastructure assets for which it has direct capital responsibility.

Further, the final rule only requires a transit provider to conduct condition assessments, establish performance targets, and include in its investment prioritization, those inventoried assets for which it has direct capital responsibility.[8] A transit provider has direct capital responsibility for any asset that it owns. A transit provider also has direct capital responsibility for any asset that is currently included in its program of capital projects or an asset that the provider can reasonably anticipate it will include in its program of capital projects during the TAM plan horizon period. Once an asset becomes a part of a transit provider's capital program, the transit provider must comply with the final rule's condition assessment, target setting (if applicable), and investment prioritization requirements. This reduction of scope allows a transit provider to obtain a broad view of the condition of the assets within its system, but limits the majority of the burden of associated with other activities that may have limited impact due to the provider not having direct capital responsibility.

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[8] See Appendix C for example tables to illustrate the relationship amongst TAM plan elements.

FTA does not believe that it will be overly burdensome for a transit provider to include third-party owned vehicles, facilities, and guideway infrastructure in its asset inventory. Transit providers are already required to include detailed information on third-party vehicles and third-party guideway infrastructure in the NTD. FTA believes expanding asset inventories to include third-party passenger facilities and exclusive use maintenance facilities is important, as it will provide valuable information on the total number, size, and scope of facilities in the transit industry. The inclusion of a broad set of assets into the inventory is intended to provide funding decision makers with a full picture of their system and an opportunity to think proactively and long term about investment priorities for state of good repair.

FINAL RULE:

FTA is including this section in the final rule without substantive change. However, FTA is revising § 625.25(b)(1) to clarify which assets used in the provision of public transportation must be included in an asset inventory and to require condition assessments for those asset that a transit provider has direct capital responsibility for. FTA will issue guidance to aid transit providers in the implementation of the requirements of this final rule.

COMMENTS: Applicability—Other Comments

Some public comment submissions included other comments relating to the scope or applicability of the proposed rule. A State DOT, a business association, and a tribal government suggested that the TAM rule should apply only to capital assets purchased (or eligible to be funded) with FTA funding. State DOTs and other commenters said TAM plans for providers that only receive Section 5310 funds should only be required to include "FTA-funded" assets, even if FTA does not apply this definition to all TAM plans. An MPO, a State DOT, and a State transit agency said Section 5310 recipients should be excluded if they do not own vehicles funded through FTA sources. Two State DOTs and a transit operator suggested that all Section 5310 subrecipients that are not also Section 5307 or 5311 subrecipients should be excluded from the FTA TAM requirements. Three State DOTs, an MPO, and other commenters recommended that 5310 requirements for TAM reporting should be scaled back to a level that is reasonable and appropriate, reasoning that most 5310 subrecipients do not have the resources to implement a TAM or report to the NTD.

A professional association and a transit operator requested that FTA provide an exemption from the FTA TAM requirements to transportation providers that have fewer than 30 or 31 vehicles operating during peak service, which the commenters said would include most Section 5310 agencies. The transit operator stated that subrecipients awarded Section 5310 program funds are predominantly very small human service agencies including disability, aging, and health service providers, and asserted that human services agencies performing as transit providers are vastly different than transportation agencies in size, function, investment, and target populations served. Further, the professional association stated that the 30-vehicle threshold is consistent with the definition used in NTD reporting requirements to differentiate small from large agencies.

Similarly, a State DOT urged FTA to reduce the requirements for rural transit systems that have a minimal number of assets, including Section 5310 and Section 5311 subrecipients. An MPO recommended the creation of a tier III for Section 5311 subrecipients to ensure that the Group plans are manageable in scope and size. Two State DOTs and other commenters suggested that Section 5310 subrecipients should be exempt from the rule; however, if they are included, then these commenters recommended that Section 5310 subrecipients having less than ten vehicles should be exempt. Another State DOT suggested that any transit agency with fewer than ten vehicles should be exempt from TAM plan requirements. One commenter stated that the inclusion of Section 5310 vehicles was confusing because they have a much smaller useful life and operate in a different area than public transportation vehicles. This commenter was concerned that including these vehicles would dilute the SGR for the program as a whole.

An association that serves as a liaison between state departments of transportation and the Federal government said that 5310 subrecipients will find the burden of accepting FTA funds to significantly outweigh the benefits to their organization. According to this association:

> "State DOTs will find it increasingly difficult to find effective subrecipients with the final result being loss of essential transportation services. Seniors and persons with disabilities will lose their only means for transportation to the grocery store, friends and family, and medical services. Section 5310 is an important aspect of the Rides to Wellness Initiative. One of the goals of the Coordinating Council on Access and Mobility is to "Streamline federal rules and regulations that may impede the coordinated delivery of services, and improve the efficiency of services using existing resources." However, without scaling back the TAM plan requirements for Section 5310 subrecipients, FTA is adding barriers that may be impossible to overcome."

Other commenters also stated that the cost of complying with the TAM requirements may result in Section 5310 entities discontinuing the services they provide.

A transit operator recommended that tier II providers that can demonstrate that they have effective existing asset management systems should be eligible for waivers from the TAM plan requirement. Several State DOTs and other commenters said subrecipients that receive solely Section 5311(f) funds should be excluded from the TAM planning process because intercity bus service (Section 5311(f)) is expressly excluded as a public transportation provider under the MAP–21 definition of public transportation in 49 U.S.C. 5302. If the final rule does not exempt the Section 5311(f) program in its entirety, one State DOT suggested that the rule should clarify that for the Section 5311(f) program, each State DOT may limit its TAM plan to just those assets deployed in their State and the State DOT has directly funded with Section 5311(f) funds, given that many States contract with national or regional private companies for the program.

An anonymous commenter asked if subrecipients of 5309 grant-funded vehicles that serve their clients and do not provide public transit service must be included in the TAM plan.

Two State DOTs said assessing the condition of and making an investment plan for each capital asset unit will place too large of a burden on subrecipients since the unit or units in question might represent a very small portion of the total dollar value of the provider's assets. Another State DOT suggested that (1) the rule should only focus on those assets that require long-term financial planning windows, (2) leased assets should not be included in the scope of the rule unless the lease is for a minimum of 5 years, and (3) the rule should expressly exclude office space or other administrative support facilities or equipment.

A representative of tribal governments commented that it interprets the proposal as covering every Indian tribe that receives Chapter 53 transit funding, regardless of how small such Federal assistance may be or how few capital assets a tribal transit system may possess. A tribal government suggested that FTA consider a tier III transit provider classification for Indian tribal governments that would mandate much simpler planning and reporting requirements. This commenter reasoned that because Indian tribes own and operate ten vehicles or less at any given point in time, the man-hours burden to comply with the TAM rule cannot be justified for transit systems of this size and scale.

A State DOT recommended that FTA should develop a four tiered approach similar to current Federal regulations, with tier requirements based on population (*i.e.,* less than 50,000, 50,000–200,000, and greater than 200,000), with a fourth tier for specialized services. This commenter reasoned that the proposed two-tier framework based on a threshold of peak revenue vehicles would not adequately segregate systems with varying sizes and asset management capabilities. A trade association recommended that FTA revise its proposed TAM rule to incorporate scalable mechanisms for TAM plans appropriate to the size and scope of each agency.

Two commenters suggested that FTA change proposed § 625.3 language to read: "This part applies to all recipients or subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53 that own, operate, or manage capital assets used in the provision of all modes of public transportation."

A State DOT recommended that FTA provide in § 625.3 a more comprehensive list of all FTA recipient and subrecipient types that would be subject to the FTA TAM regulation.

An MPO commented that the requirements for non-public transit provider recipients to comply with the TAM rule potentially would create an undue burden for FTA and the funding recipients and the cost for these projects and services to comply likely outweighs their impacts to the transit SGR for most regions. For this reason, the commenter recommended that FTA should either exempt recipients that receive only Section 5307 or Section 5310 funds from the TAM plan requirements, or further reduce the requirements for those providers.

Asserting that TAM requirements should be different for bus-only systems, a professional association suggested that FTA consider using the language and concepts developed in the voluntary bus safety program developed from the 2003 Memorandum of Understanding signed by FTA, American Association of State Highway and Transportation Officials (AASHTO), the American Public Transportation Association (APTA), and the Community Transportation Association of America (CTAA).

FTA'S RESPONSE: Applicability—Other Comments

In order to address the SGR backlog in a meaningful way, FTA believes that a TAM plan must account for both those assets acquired with FTA funding and those that were not. In many cases, it is neither feasible nor does it make sense to distinguish between assets that were acquired with FTA funds and those that were not. Indeed, many of the legacy rail assets in the state of good repair backlog that are most in need of replacement were procured decades ago, prior to the establishment of a Federal financial assistance program for public transportation. The source of funds used to acquire the asset is of no consequence when making a determination regarding whether or not an asset is in a state of good repair and whether or not the asset needs to be included in the investment prioritization. FTA believes that accounting for all assets will provide a transit provider with important information that should be used to make more informed investment decisions for state of good repair.

FTA believes that this final rule is sufficiently scalable and flexible. FTA does not agree that it should provide waivers for tier I providers who already have effective transit asset management systems. The rule does not require a transit provider to abandon existing effective practices. Instead, the requirements of the rule can be integrated into and complement existing practices. Moreover, FTA does not agree that some or all tier II providers should be exempted from the TAM requirements. Tier II providers are only required to develop a four element TAM plan. A tier II plan must include only (1) an asset inventory, (2) condition assessments, (3) a decision support tool, and (4) a prioritization of investments for state of good repair.[9] A tier II provider also is required to set performance targets and report to the NTD. The fewer assets a provider has, the fewer assets would be included in an asset inventory, and the less time and effort would be required to comply with the other requirements.

In addition to the reduced requirements, tier II providers also may be eligible to participate in a group TAM plan that would be developed by a sponsor. The sponsor would be responsible for developing the TAM plan, setting targets, and reporting to the NTD on behalf of the group TAM plan participants. FTA believes that the two-tiered approach and group TAM plan option significantly reduce the burden of the TAM requirements on smaller, less sophisticated transit providers.

To the commenter concerned that inclusion of 5310 would "dilute the SGR of the program as a whole," under the final rule, the performance measure for vehicles is based on the ULB. A transit provider may set a ULB in consideration of the type of vehicle, type of service, and operating environment. The ULB option allows for a more accurate assessment of the useful lives of vehicles based on operational realities.

This final rule only applies to recipients and subrecipients of chapter 53 funds who own, operate, or manage public transportation capital assets used in the provision of public transportation. The final rule does not apply to recipients of planning or research grants and cooperative agreements that do not provide public transportation. The term "public transportation" is defined at 49 U.S.C. 5302(14) and means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and does not include—

1. intercity passenger rail transportation provided by the entity described in chapter 243 (or a successor to such entity) of Title 49,
2. intercity bus service,
3. charter bus service,
4. school bus service,
5. sightseeing service,
6. courtesy shuttle service for patrons of one or more specific establishments, or
7. intra-terminal or intra-facility shuttle services.

Public transportation does not include intercity bus transportation that may be

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[9] By contrast, a tier I plan must include these four elements and also these five additional elements: A TAM and SGR policy; a TAM plan implementation strategy; a description of key TAM activities that the provider intends to engage in over the TAM plan horizon period; a summary or list of the resources, including personnel, that the provider needs to develop and carry out the TAM plan; and an outline of how the provider will monitor, update, and evaluate, as needed, its TAM plan and related business practices, to ensure the continuous improvement of its TAM practices.

eligible for financial assistance under 49 U.S.C. 5311(f). In addition, public transportation does not include service that is closed to the general public and only available to a particular clientele. For example, a subrecipient under the formula program for elderly persons and persons with disabilities (49 U.S.C. 5310) that operates service that is open to a segment of the general public (*e.g.* elderly persons or persons with disabilities) must comply with this final rule. However, a nonprofit subrecipient under the section 5310 program that operates closed-door service (*e.g.* for members of a specific senior center or for participants in a specific sheltered workshop program only), is not a provider of public transportation and is not subject to the final rule.

To clarify, recipients and subrecipients of 49 U.S.C. 5310 program funds that do not operate public transportation are not subject to this rule. FTA estimates that this rule would apply to approximately 20% of all recipients and subrecipients of section 5310 funds. Those 5310 providers that are subject to the rule are eligible to participate in a group plan developed by a TAM plan sponsor which significantly reduces the impact of this rule to 5310 providers.. FTA does not believe the TAM provisions in this rule will result in a reduction or discontinuation of 5310 services, nor does FTA believe that State DOTs will find it difficult to find effective subrecipients to participate in their 5310 programs as a result of the rule.

FINAL RULE:

FTA is including this section in the final rule without substantive change. However, FTA has revised § 625.25(b)(1) to clarify which assets used in providing public transportation, including but not limited to all revenue vehicles, all passenger stations, all exclusive use maintenance facilities, all non-revenue service vehicles regardless of value, and owned equipment over $50,000 in acquisition value, must be included in an asset inventory and § 625.25(b)(2) to require condition assessments of only those asset that a transit provider has direct capital responsibility for.

Section 625.5 Definitions

This section proposed definitions for terms that would be applicable to the proposed part. Some of the terms were familiar to the transit industry, but were defined slightly differently for purposes of the NPRM. This final rule includes a number of non-substantive changes to the definitions proposed in the NPRM to provide further clarity regarding the meaning of terms.

COMMENTS: Definition of "Accountable Executive"

Several State DOTs and other commenters recommended that FTA should clarify the definition of Accountable Executive by adding, "An official of a State may not be considered to be an Accountable Executive unless the State is a transit provider and, if so, only with respect to the State's activities as a transit provider." One State DOT requested that FTA redefine "Accountable Executive" for State DOTs or subrecipients who are in a group plan and state that the executive does not necessarily have the full range of responsibilities as defined.

Three commenters suggested that the definition should take into consideration that some transit agencies may have an organizational structure where the listed responsibilities are divided among more than one executive. For such agencies, these commenters suggested that the agency should be allowed to identify the Accountable Executives and their respective roles as part of the TAM plan. For similar reasons, rather than defining the Accountable Executive, a transit operator suggested that FTA inform State and local governing bodies that whoever is designated as the Accountable Executive must be granted authority to implement the adopted capital and TAM plan. Further, this commenter proposed that FTA add a provision that states no liability rests on the Accountable Executive personally.

An industry association commented that it may be overly burdensome and cause an overlap of job duties to have one Accountable Executive that oversees all safety and asset management requirements in planning, operations, maintenance, and other departments. A transit agency recommended that the Accountable Executive for asset management decisions and for the certification of agency TAM plans, be enabled to be separate from the decision-maker on safety because in many agencies the safety management decision-maker and the asset management decision-maker are different people, reporting to the chief executive.

Two MPOs stated that, in the case of the small, urbanized areas, it is unclear how the Accountable Executive at the local level can be responsible for approving the TAM plan if it is developed, approved, and implemented by the State.

A transit operator asked FTA to clarify whether the Accountable Executive may be the Chief Executive Officer (CEO) or General Manager (GM). Stating that the proposed definition of Accountable Executive is not consistent with the SMS rule that was provided earlier this year, one commenter suggested that if the intent is to point directly at the GM, CEO, President, or highest ranking executive, the definition should be shortened to that statement.

FTA'S RESPONSE: Definition of "Accountable Executive"

FTA agrees with commenters who suggested that a group TAM plan sponsor is not the Accountable Executive for each participating transit provider. However, by participating in a group TAM plan, an individual transit provider's Accountable Executive may be required to defer to the decisions of the sponsor regarding prioritization of investments. Nonetheless, each transit provider's Accountable Executive is ultimately responsible for implementing TAM at their agency.

An Accountable Executive should be a transit provider's chief executive; this person is often the CEO or GM. FTA understands that at many smaller transit providers, roles and responsibilities are more fluid. However, FTA does believe that, even in circumstances where responsibilities are either shared or delegated, there must be one primary decision-maker who is ultimately responsible for both transit asset management and safety. It is a basic management tenet that accountabilities flow top-down. Therefore, as a management system, transit asset management requires that accountability reside with an operator's top executive.

FINAL RULE:

FTA is including the definition in the final rule without substantive change.

COMMENTS: Definitions of "Asset Category" and "Asset Class"

A transit operator commented that the grantee should have flexibility to establish classes that match its existing planning and/or budgeting systems. This commenter recommended that Appendix A should be clearly labeled as not being definitive.

Three commenters recommended that FTA align the proposed asset categories with FTA's TERM/TERM Lite programs. A transit operator expressed support for FTA's approach to asset categories stating that this flexible approach would allow the classes to mirror each provider's capital program more effectively.

FTA'S RESPONSE: Definitions of "Asset Category" and "Asset Class"

FTA proposed simple, flexible definitions for the terms "asset category" and "asset class." The proposed definitions are compatible with most existing planning and budgetary systems, including those used by TERM-Lite. The asset class examples listed in appendix A do not represent all possible classes of assets, nor do they represent the only asset categories that may be used. For example, TERM-Lite uses a separate asset category for systems, whereas this rule includes systems as part of the infrastructure category. Nonetheless, the two definitions are compatible, and can be cross-referenced with each other.

FTA has labeled Appendix A as an example, as suggested by a commenter. Each transit provider may define its own asset classes within an asset category, provided that the transit provider is able to meet the performance measure target-setting and NTD reporting requirements of the final rule.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definition of "Asset Inventory"

A transit provider recommended that the regulation and any guidance should specify that the term "asset inventory" refers to the required biennial inventory and that references to the inventory are comparable wherever it is required. Further, this commenter suggested that FTA consider adopting the FHWA Highway Economic Requirements System (HERS) approach, which is based on statistical sampling, and which the commenter asserted would improve data quality and reduce data collection burden.

FTA'S RESPONSE: Definition of "Asset Inventory"

FTA proposed a simple definition for the term "asset inventory." A transit provider may develop an asset inventory to meet the requirements of the final rule by using a number of sources, including its existing biennial inventory. FTA did not set forth a sampling method for a transit provider to determine which assets it should include in its asset inventory. This final rule requires that a transit provider's asset inventory include all assets used in providing public transportation. However, a transit provider may satisfy the requirement for condition assessments by conducting a sampling of assets within an asset class, or use another method of their choosing.

FINAL RULE:

FTA is including the definition in the final rule without change. However, FTA notes that § 625.25(b)(1) has been modified to clarify the assets this final rule requires to be included in the TAM plan asset inventory.

COMMENTS: Definition of "Capital Asset"

Several transit operators and State DOTs requested a clearly defined monetary threshold for "capital assets." Some commenters that recommended a minimal monetary threshold reasoned that it would allow for the collection of only useful data and eliminate the tracking of items of minimal value that are not critical to the provision of public transportation (such as trash dumpsters, office desks, copiers, fax machines, floor jacks, desk calculators, office chairs, coffee pots, clocks, battery chargers, etc.), which would impose a substantial burden on transit agencies. A transit operator urged FTA to decide on a dollar threshold based on evidence with some likely projection of outcome (*e.g.*, number of assets and value of the data from the assets).

Some commenters recommended specific monetary thresholds, including $100,000, $50,000, $25,000, $10,000, and $5,000.

Other commenters suggested other criteria in addition to monetary thresholds for what should be considered an asset. For example, three State DOTs and other commenters recommended that a capital asset must meet all of the following criteria to be required as part of TAM plan asset inventory: (a) FTA-funded, including assets likely to be maintained, replaced, or repaired with FTA funds; (b) an initial cost of at least $50,000 (as determined by the provider) or any rolling stock; (c) a ULB of at least 5 years or greater. Two transit operators also suggested that only federally funded assets should be considered capital assets for purposes of the TAM plans. In contrast, one State DOT expressed support for the TAM plan covering all assets in the provision of public transportation and not just the ones purchased with Federal funding, reasoning that it would allow for more consistency in the TAM development, implementation, and review process.

A business association agreed with criteria (b) and (c) of the above suggested capital asset definition. This commenter and an MPO also requested that FTA specify the assets to be included to avoid inconsistencies during reviews. For example, these commenters asked whether spare parts with a new bus should be included. These commenters also recommended that FTA provide a phase-in for asset classes that are lower priority, such as equipment with a value of less than $50,000.

A State DOT agreed with criteria (a) of the above suggested capital asset definition, but for the monetary threshold (criteria (b)), it recommend a lower value threshold of $20,000. Similarly, to reduce the cost burden to transit providers, two MPOs and three other commenters recommended that FTA limit assets reported in the TAM plan to assets with a value of at least $50,000 and a ULB of five years or greater. A State DOT agreed with these thresholds for non-rolling stock transportation assets, but suggested that the scope of assets included in a TAM plan should include all rolling stock.

A joint submission from regional transit organizations said FTA should define a cost/expected life threshold of an asset to be tracked and assessed. For purposes of FTA's TAM program, assets thresholds should be at higher levels (*i.e.*, over $50,000 and more than a 3-year life) or established risk vulnerabilities. A transit operator suggested further defining what is considered a capital asset for purposes of the National TAM System by providing thresholds of a minimum cost of $50,000 and a useful life of 1 year.

A professional association, a State DOT, and transit providers requested that FTA permit States and direct recipients to use their own definition of capital asset or existing industry standard best practices (*e.g.*, ISO 12224 standards). Some transit operators recommended that each transit operator should be allowed to determine which assets to include in its TAM plan (*e.g.*, only assets deemed critical to a transit provider's operation or service/risk model), with one commenter expressing concern about double counting of shared assets. Although commenting that the definition of asset is unique to each agency, an MPO requested that FTA issue broad guidance or a set of parameters that would clarify what FTA considers an asset.

A transit operator made the following comments: (1) It is important that asset definitions are understood uniformly across the departments of a single organization, and across transit agencies, nationwide, (2) FTA should refrain from expanding the definition of capital asset beyond the level of detail prescribed by 49 U.S.C. 5326, and (3) the regulatory definition should be narrowed, rather than broadened, to provide clarification. The commenter also said FTA should update its C5010.1

Grants Management and C5300.1 State of Good Repair Grants Program guidance documents to reflect the definitions established by this rulemaking.

In contrast, expressing concern that the term "minimum level of granularity" could be construed to include assets whose value is so minimal as to make the maintenance of the asset inventory unreasonable, a State public transportation system urged FTA to instead define and construe capital assets more broadly. Similarly, a transit agency recommended that FTA not restrict agencies to focus only on "capital assets" and simply use the term "assets." Two commenters suggested that FTA revise the definition to reference an asset "used in any mode of public transportation."

A transit operator suggested that capital assets should, at a minimum, include items that most agencies presently track as an asset due to their cost and impact on the overall asset's condition (*e.g.,* bus engines, bus transmission, bus axles, rail HVAC units, and rail trucks). Another transit operator also expressed concern with the proposed definition of capital asset, commenting that systems within facilities or portions of infrastructure may be more realistically considered capital assets.

FTA'S RESPONSE: Definition of "Capital Asset"

FTA proposed a broad definition of "capital asset". The definition encompassed all capital assets that may be used in the provision of public transportation service. Commenters who suggested that FTA include a monetary threshold in the definition of the term capital asset should understand that there is a distinction between what a capital asset is and whether or not it must be included in an asset inventory. FTA clarifies that the definition of "capital asset" does not include supplies (such as trash dumpsters, office desks, copiers, fax machines, floor jacks, desk calculators, office chairs, coffee pots, clocks, battery chargers, etc.); implementation guidelines will provide specific alignment with other FTA program guidance, for example, FTA's Grant Management Requirements Circular 5010.1.D. FTA has revised the final rule to clarify which capital assets a transit provider must include in its asset inventory.

FTA considered including a monetary threshold in the definition of a capital asset, and alternatively, a monetary threshold for including a capital asset in the TAM plan, but has decided against this approach. FTA wanted to propose a flexible and scalable approach to TAM that could apply to all different types of transit agencies. FTA believes the proposed definition is consistent with a scalable and flexible approach that can accommodate many existing capital planning practices. A monetary threshold could work against that interest because it would establish a one size fits all fiscal indicator, which may not have the same significance for every transit provider. Further, in order to stay current, FTA would need to regularly adjust a monetary threshold for inflation over time.

However, FTA has identified a monetary threshold for the equipment category to provide structure and consistency to the types of assets required in this category. The equipment category could be misapplied depending on the size of a transit provider's portfolio, as some transit providers identify equipment to a level of specificity beyond usefulness in a TAM plan. FTA has determined that all non-revenue service vehicles regardless of value and any owned equipment over $50,000 in acquisition value must be included in a TAM plan asset inventory. These constraints maintain the value of including equipment assets in the TAM plan without introducing undue burden on transit providers to include items of minimal value.

Historically, FTA has not required tracking of Federally-funded assets below $5,000 in value. This rule does not change that. Transit providers will not be required to include in their asset inventories any assets, regardless of funding source, that fall below the $5,000 threshold, or whatever subsequent threshold is established by FTA Circular 5010 or its successors.

In addition, FTA does not agree with the comments that recommended FTA phase-in requirements for assets. Each transit provider will determine the appropriate asset hierarchy and the level of detail based on the level of detail a transit provider already captures in their program of capital plans. The practice of transit asset management requires that a transit provider have a robust and complete assessment and understating of all of the assets within its system. To require a transit provider to identify "priority" assets would undervalue this fundamental aspect of TAM. Moreover, only when a transit provider has a complete understanding of the condition of the assets within its system is it able to create meaningful investment prioritization to improve or maintain a state of good repair.

FTA believes that third-party assets are mission-critical to the provision of public transportation service, and need to be accounted for in an asset inventory in order to have a clear picture of which assets are essential to the transit provider in delivering service. In this final rule, a transit provider must incorporate into its inventory only those capital assets that either it owns or specific asset types owned by a third party. Specifically, transit provider is not required to include in its asset inventory equipment that is owned by a third-party or third-party owned shared-use maintenance facilities. For example, a transit provider that uses a commercial, third-party maintenance facility, such as a national chain oil change company, attached to a commercial gas station does not need to include this asset in its inventory. However, a transit provider must only comply with the requirements in the rule for conditions assessments, targets, and investment prioritization for those assets for which the provider has direct capital responsibility, including third-party owned assets.

This final rule does not prescribe a level of detail for the asset inventory hierarchy. Instead, the final rule requires that a transit provider disaggregate divisible capital assets in a manner that is consistent with how the assets are identified in the transit provider's program of capital projects. For example, a project for a facility, which is comprised of multiple components, could be programmed as a project for an HVAC system or as a project for condenser and duct work; in either case, if the provider's program of capital projects itemizes the project as HVAC, then the provider may report HVAC in the TAM asset inventory. If a capital asset is of such low value that it would not be included in a transit provider's program of capital projects, then that asset need not be identified in the asset inventory required under this final rule.

FINAL RULE:

FTA is including the definition in the final rule without change. However, § 625.25(b)(1) has been revised to clarify which assets used in the provision of public transportation must be included in an asset inventory, including but not limited to all revenue vehicles, all passenger stations, all exclusive use maintenance facilities, all non-revenue service vehicles regardless of value, and owned equipment over $50,000 in acquisition value, must be included in an asset inventory at a level of detail commensurate with the level of detail used to describe assets in a transit provider's program of capital projects.

COMMENTS: Definition of "Decision Support Tool"

Two commenters recommended that FTA revise paragraph (1) of the proposed definition of "decision support tool" to add the phrase "including safety critical systems and components" after "condition data."

FTA'S RESPONSE: Definition of "Decision Support Tool"

FTA proposed a broad definition of "decision support tool." FTA does not believe that it is necessary for the definition to explicitly include reference to "safety-critical systems and components" in the definition of decision support tool

FINAL RULE:

FTA is including the definition in the final rule without substantive change.

COMMENTS: Definition of "Equipment"

A State transit association said the definition of "equipment" should have a dollar threshold attached. An MPO recommended that a unit of equipment be defined as an FTA-funded asset with an initial cost of at least $50,000, or any rolling stock with a ULB of at least 5 years or more.

A public transportation association said that no individual asset with an initial value under $50,000 or such higher value as the agency has established for financial statement purposes should be tracked as a "unit of equipment." Requiring agencies to assess and report TAM information for equipment with lesser values could capture mundane assets such as trash dumpsters. According to this commenter, "even with a $50,000 or locally established threshold, transit agencies would be free to track other assets deemed critical to their operation. Rolling stock such as paratransit vans would continue to be captured as rolling stock. Both FTA and the individual agency would have useful data, free from the clutter of hundreds or thousands of line items of minimal value and not critical to the agency mission, consistent with the example in draft Appendix A. Additionally, this would allow agencies to report with an eye to risk. Without linking the reporting requirement to operational risk, the transit industry is simply counting and spending money to gather irrelevant data."

Several commenters stated that the proposed definition of "equipment" seems to include a wide range of asset classes, while other parts of the proposed rule define equipment as non-revenue vehicles (*e.g.*, Appendix A, § 625.41, § 625.43(a)). One transit agency recommended that non-revenue vehicles should be included in the vehicle asset class, not the equipment class. Similarly, another transit agency asserted that transit providers use the term "equipment" in regards to portable tools, work machinery, or components, and that it is not a term reserved for non-revenue vehicles.

Another commenter suggested that FTA allow the transit agency to define equipment, as well as other categories in the TAM plan, at a level that is suitable to the agency (*e.g.*, "equipment means an item that is necessary to perform the primary transit function of moving people in a safe efficient manner").

A transit operator expressed concern that the definition as proposed would unintentionally drive useful life to less than 1 year. This commenter proposed that equipment be grouped together; for example, overhead doors would be maintained and replaced as one group instead of individual assets. Asserting that a 1-year useful life threshold is too short, a transit operator suggested that FTA allow grantees to rely on State laws that determine eligibility for capital investments to determine what property qualifies as "equipment."

FTA'S RESPONSE: Definition of "Equipment"

The purpose of the National TAM System is to tackle the Nation's growing SGR backlog by improving the condition of transit assets. FTA does not believe that a definition of equipment should exclude assets that are not in a state of good repair, but don't meet a monetary threshold. However, FTA acknowledges that an unspecified minimum threshold is confusing to transit providers. The final rule allows a provider to exclude from its asset inventory all equipment with an acquisition value below $50,000. However, an asset inventory must include all non-revenue service vehicles regardless of value.

This final rule does not prescribe a level of detail for the equipment asset category. Instead, the final rule requires that a transit provider identify capital assets in a manner that is consistent with how the assets are identified in the transit provider's program of capital projects. FTA conducted a review of nine transit providers, representing three types of transit operations, to find out the level of detail captured in their program of capital projects. FTA found that each transit provider, included varying levels of detail in their program of capital projects, but none so detailed as to include items of de minimus value, such as trash bins, pencils etc. FTA clarifies that "equipment" does not include supplies; implementation guidelines will provide specific alignment with other FTA program guidance, for example, FTA's Grant Management Requirements Circular 5010.

FTA recognizes that the threshold in this final rule differs from the current definition of equipment in the 5010 Circular, which states a $5000 acquisition value. FTA believes that equipment assets that fall between the $5000 threshold of the current 5010 Circular and the $50,000 threshold of this final rule are likely to be limited to assets that do not affect the SGR backlog. However, FTA notes that transit providers are encouraged to include equipment assets in their TAM plan that will impact their safety and operations to be considered alongside other assets in their inventory and investment prioritization.

FTA included Appendix A example in the NPRM to provide examples of asset classes. FTA did not intend for Appendix A to serve as an exhaustive list. A transit provider may choose how it defines asset classes within the equipment category for its TAM plan.

FTA agrees with the commenter that highlights that the final rule allows transit providers to establish locally defined thresholds to track assets deemed critical to their operation, providing "useful data free from clutter of hundreds of thousands of line items of minimal value not critical to the agency mission". FTA notes that this rule does not specify a risk-based approach to asset management but does recognize linking reporting to operational risk is a practice some transit providers may undertake.

FINAL RULE:

FTA is including the definition in the final rule without change. However, § 625.25(b)(1) has been revised to clarify that the only equipment assets that must be included in a TAM plan asset inventory are; non-revenue service vehicles regardless of value and owned equipment over $50,000 in acquisition value.

COMMENTS: Definition of "Facility"

A transit provider commented that FTA's definition should recognize that not all buildings or structures used in the provision of public transportation are the same and asserted that the proposed definition does not provide an adequate description of public facing, operational, and administrative facilities.

FTA'S RESPONSE: Definition of "Facility"

To clarify, FTA proposed a broad definition of facility that encompassed any buildings or structures used in providing public transportation, including passenger stations, operations, maintenance, and administrative facilities.

FINAL RULE:

FTA is including the proposed definition in the final rule without change.

COMMENTS: Definition of "Full Level of Performance"

Three transit operators suggested that this term should not include the word "full"; rather, they suggested that the performance of the asset is the ability to provide the required level of service to customers or performance. Further, one of these commenters suggested the addition of the sentence, "Generally, this can be measured in terms of reliability, availability, capacity, and meeting customer demands and needs." The other transit operators reasoned that a benchmark for legacy transit systems is subject to interpretation.

Two commenters suggested that FTA expand the definition of "full level of performance," reasoning that the proposed meaning is unclear because an asset degrades from new overtime and with use, thus, never again being at its "full level" of performance. These commenters also recommended that FTA add references for compliance with the Americans with Disabilities Act (ADA) requirements as set forth in 49 CFR parts 37, 38, and 39, which would speak to ensuring entities are meeting their obligations under 49 CFR 37.161.

A transit operator and a business association recommended that FTA use "fit for intended purpose" rather than "full level of performance" because it would still allow for reduced performance as long as an asset meets the required performance level and that the FTA's proposed SGR definition does not allow for the somewhat degraded performance of some assets experienced over time under even ideal conditions. Minimally, this commenter asserted that "full level of performance" requires additional explanation or slight modification to say "acceptable level of performance" or something similar, reasoning that "full level of performance" implies an absolute condition, which is not always achievable in transit. Although expressing support for the FTA definition of SGR because it would provide flexibility for each local agency to establish its own standards, a State DOT recommended that FTA reconsider the previously proposed definition that included "fit for purpose" and similar descriptions.

A State transit association said using safety as a component of "full level of performance" without further clarification overlooks the reality of operating policies.

FTA'S RESPONSE: Definition of "Full Level of Performance"

FTA intentionally proposed an aspirational definition of "state of good repair." FTA intended for the proposed definition to describe an asset at its best ideal performance condition. The term "full" describes an aspirational level of performance, which would require a transit provider, even those of legacy systems, to consider how far beyond optimal performance the system is operating. Full level of performance is not an absolute "like new" condition, but FTA proposed that a transit provider measure the state of good repair of its assets by applying the three objective standards.

FTA recognizes that old assets and assets in deteriorated condition may still provide an acceptable level of performance. However, merely operating at an "acceptable" level of performance with older assets in need of replacement does not represent a state of good repair.

FTA does not believe that "fit for its intended purpose" is sufficient to meet the statutory requirement that the definition of state of good repair include "objective standards" for measuring the condition of capital assets. For example, it is not uncommon for a transit provider to continue to use a railcar with limited functioning HVAC during high demand periods. While the rail car may be "fit for the intended purpose" of meeting revenue service demands, the performance of the HVAC system indicates the deteriorating condition of that rail car, which is not the same as full performance. This initial indicator of declining condition should be used to inform decisions on asset replacement. The purpose of the National TAM System is to improve the condition of the Nation's aging capital assets. In order to bring about meaningful change, FTA does not believe it should establish a system based on the status quo. Instead, FTA must establish a baseline that will bring about change.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definition of "Horizon Period"

A transit operator suggested that FTA explain how the term "horizon period" compares to the term "useful life."

FTA'S RESPONSE: Definition of "Horizon Period"

The "horizon period" is the period of time beginning with the completion of a TAM plan and ending four years later. The term "useful life," used in FTA grant programs refers to the FTA-developed performance period for a capital asset. In general, FTA funds may not be used to replace an asset until it has reached or exceeded its useful life.

FINAL RULE:

FTA is including the definition in the final rule without substantive change.

COMMENTS: Definition of "Infrastructure"

Two commenters recommended that the definition for infrastructure should also provide itemized categories including but not limited to Power, Track, Ventilation, Elevators, Escalators, Detectable Warning Strips, PA/VMS Equipment, Rolling Stock Subsystem Elements including doors, ramps, bridge plates, lifts, designation signs, public address equipment, and securement systems, among others.

A local government said the word "interconnect," as used in the definition, can be interpreted tangibly or intangibly. In order to provide consistency across what is reported among bus and van providers, the commenter recommended that the final rule should either include applicable examples or else establish that this asset category may not apply to providers whose rolling stock capital assets are limited to buses and vans.

A transit operator said that the definition is vague when it is applied to assets other than rail infrastructure. Another transit operator commented that this term overlaps with "facility."

FTA'S RESPONSE: Definition of "Infrastructure"

FTA proposed a broad definition of infrastructure, which encompassed all infrastructure classes for all modes of public transportation. Given this broad definition, FTA does not believe that more narrowly itemized categories are necessary.

FINAL RULE:

FTA is including the definition in the final rule without substantive change.

COMMENTS: Definition of "Investment Prioritization"

A transit operator recommended that paragraph (2) of the definition should reference safety risk considerations. Expressing confusion that under this definition, investment prioritization must be fiscally constrained, a transit operator asked what needs to be reported if activities are not undertaken due to such constraints. Another transit operator suggested adding language to acknowledge other factors outside the prioritization criteria, such as intangibles, outside influences, and other defendable mitigating circumstances.

FTA'S RESPONSE: Definition of "Investment Prioritization"

The NPRM proposed that a transit provider consider safety needs in the process of developing its investment prioritization. Resilience to climate change and service reliability are two other risks that transit providers may consider in the process of prioritizing investments. FTA did not propose a mandatory requirement for specific risk based analyses. However, FTA encourages and supports the application of a risk based asset management approach to the development of a transit provider's investment priorities.

Funding for any transit purpose is defined by Congress. FTA may not, through rule, establish additional sources of funding for any purpose that is not already eligible for such funding. A TAM plan should provide a transit provider with quantitative information that may be provided to a transit board and local funding bodies to support a strategic justification for the allocation of additional funds.

FINAL RULE:

FTA is including the definition in the final rule without substantive change. Section 625.33 included requirements for investment prioritization. Investment prioritization is both the analytical process used to prioritize investments and the resulting list of capital programs and projects. Investment prioritization is temporally and fiscally constrained, and should be based on reasonably anticipated funding levels from all revenue sources. The resultant list can be ranked by category or order.

COMMENTS: Definition of "Key Asset Management Activities"

A transit operator commented that for a large grantee the size and complexity of this list will reflect the scale of the organization, and the interconnectedness of the grantee's management structure may make the presentation of such a list seem like an "unwieldy organization chart."

FTA'S RESPONSE: Definition of "Key Asset Management Activities"

FTA agrees with the commenter that the scale and complexity of key asset management activities will reflect the scale and complexity of the transit provider's system.

FINAL RULE:

FTA is including the definition in the final rule without substantive change. Key asset management activities are the actions that a transit provider determines are necessary for implementing TAM practices within the organization and are critical to achieving the provider's transit asset management goals. These activities are not limited to outputs of transit asset management, but may include activities that support asset management, such as the purchase of decision-support software or a training program for key personnel.

COMMENTS: Public Transportation System

A State DOT asked if Section 5310 fund recipients are considered general public transportation.

FTA'S RESPONSE: Public Transportation System

Public transportation does not include service that is closed to the general public and only available for particular clientele. For example a subrecipient under the section 5310 program that operates service which is open to a segment of the general public, (*e.g.*, all elderly persons or persons with disabilities) would be required to comply with this rule. However, a subrecipient nonprofit or community organization under the section 5310 program that operates closed-door service, (*e.g.*, for members of senior center or work program only) would not be providers of public transportation and therefore are not required to comply with this rule.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definition of "Rolling Stock"

An individual commenter asked which vehicles fall under the Asset Category/Asset Class of Equipment/Service Vehicles and which vehicles fall under the Asset Category/Asset Class of Rolling Stock/Cars and Vans.

FTA'S RESPONSE: Rolling Stock

Rolling stock includes vehicles used primarily to transport passengers. Service vehicles, which fall under the equipment category, are used primarily to support maintenance and repair work for a public transportation system, supervisory work, or for the delivery of materials, equipment, or tools.

FINAL RULE:

FTA is including the definition in the final rule without change and is adding a definition for the term "service vehicle."

COMMENTS: Safety Management Systems

A transit operator recommended that FTA consider how it will implement this part of the rule if there will be additional rules for the National Public Transportation Safety Program, suggesting that FTA may want to implement all of its safety related rules at the same time.

FTA'S RESPONSE: Safety Management Systems

In the NPRM, FTA proposed that the Accountable Executive be responsible for the development and implementation of a TAM plan. The requirements of this rule related to the role and responsibilities of an Accountable Executive related to transit asset management may be implemented in the absence of rules to implement the several components of the National Public Transportation Safety Program.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definition of "State of Good Repair"

Asserting that the proposed rule followed the spirit of MAP–21, one commenter said that MAP–21 directed FTA to establish a nationwide definition for SGR and to use this definition to establish the National TAM System, the goal of which is to enable transit agencies to better use capital funding, and for decision-makers to more efficiently and effectively distribute grants. A transit operator supported FTA's definition of SGR as the condition in which a capital asset is able to operate at a full level of performance.

Another commenter approved of the proposed SGR definition, as it is aspirational with some flexibility.

A State DOT said the SGR definition is too limiting and creates a situation where SGR may only be achieved for a very limited time, or not at all, for most assets, especially vehicles, due to the use of the phrase "full level of performance." Another State DOT said an older asset may not be "able to operate at a full level of performance," but still be in a state of good repair.

A local transit operator asked how FTA envisions tying the asset performance measures to the SGR definition, particularly to safety risk, as well as how FTA would account for asset rehabilitations and life extensions. A State agency said the definition should require that the asset be shown to operate in a safe and reliable manner in order to be considered in a SGR. An individual commenter said the definition may need to be subjective in some way to enable the individual responsible for measuring SGR to improve the safety of the asset.

A transit operator proposed a definition that includes "an asset that performs as designed safely and cost effectively," reasoning that the proposed definition did not address the idea of risk or cost to maintain full level of performance. Two commenters recommended that FTA revise the definition to mean "the condition in which a capital asset is able to operate safely at a full level of performance," and define "operate safely" as asset functioning within the manufacturer's recommended specified work limits.

A transit operator said that the proposed definition is not consistent with the SGR principles (§ 625.19) and SGR performance metrics (§ 625.41). This commenter recommended that the definition be modified to "a state of good repair means the condition in which a capital asset is able to operate at the required level of performance and is fit for its intended purpose."

FTA'S RESPONSE: Definition of "State of Good Repair"

FTA appreciates commenters' agreement that the definition of SGR achieves the intent of the MAP–21 mandate, while providing flexibility and objective standards for measuring state of good repair. FTA intended for the proposed definition to describe an asset at its best ideal performance condition.

FTA disagrees that the SGR definition is not consistent with the SGR principles and standards for measuring condition of capital assets. As proposed, if an asset meets each of the objective standards, it is operating at a full level of performance and is therefore in a state of good repair. FTA agrees that the cross-section of cost and performance are the basis of asset management principles. State of good repair is a threshold that identifies the desired performance condition. Please note the "full level of performance" definition response above provides a more expanded description of this term. The SGR principles § 625.17 outline the relationship of TAM to SGR.

FTA recognizes the critical relationship of safety and asset condition. The SGR definition is in part expressed by identifying the presence of an unacceptable safety risk. The National TAM system does not direct transit providers to prove the safe and reliable operation of their assets. FTA will define safety hazard identification and safety risk assessment requirements in a proposed NPRM for public transportation agency safety plans.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definitions of "Tier I Provider" and "Tier II Provider"

A transit operator requested that the distinction between tier I and tier II operators be revised for consistency with the Federal formula grant definition of small-to-medium transit agencies. Specifically, this commenter suggested that tier II should be defined as operators that provide service to geographic areas with populations under 200,000 people. A State DOT recommended the tiers be based on FTA program type (49 U.S.C. 5307, 5310, 5311, etc.) rather than on the number of vehicles a transit provider operates.

To limit the administrative load on smaller transit agencies, transit providers, an industry association, and a business association suggested that the tier I and tier II definitions or the definition of vehicle in revenue service during peak operations should be specifically limited to buses, excluding paratransit cutaways, vans, and non-dedicated assets (*e.g.,* taxis, vanpools). A transit provider said that the "100 or fewer vehicles during peak operations" criteria for a tier II provider should not include non-dedicated equipment (*i.e.,* contractor-owned and used for other non-contract purposes) and vanpool vehicles.

A business association recommended that FTA revise the definition of "Tier II provider" to include any 49 U.S.C. 5310 subrecipients. A transit operator said many small agencies have more than 100 revenue vehicles in peak service if vanpools, mobility programs, and other services are counted, but they may not have more than 50 motorbus revenue vehicles in peak revenue service. The commenter recommended expanding/revising the definition of tier I and tier II agencies to include the types of vehicles and potentially revise the vehicle threshold.

An MPO requested clarity on how the TAM tier thresholds relate to differing service levels. For example, this commenter stated that many vanpool programs have vehicles operating in a single peak hour trip, rather than operating continuously throughout the peak hours. The commenter requested flexibility in how the threshold is defined, particularly for agencies that have limited service operations. A local government asked which tier it would fall under, as it operates less than 100 vehicles but also operates a Vehicular Inclined Plane.

FTA'S RESPONSE: Definitions of "Tier I Provider" and "Tier II Provider"

FTA proposed to establish separate requirements for smaller (tier II) and larger (tier I) transit providers. FTA agrees that the tier definition should parallel the calculation used to determine if a small operator in a large urbanized area is eligible for operating assistance under the 49 U.S.C. 5307 Urbanized Area formula program. FTA does not agree that the tier delineations should solely be based on population, area served or funding program. FTA notes that some of the smallest transit providers in the country, with just a handful of vehicles in operation, are sometimes actually located in some of the largest urbanized areas with more than one million persons in population. Likewise, there are some very large operators that receive some funding under the 49 U.S.C. 5311 Rural Area Formula Grant Program and under the 49 U.S.C. 5310 Grant Program for special services to the elderly and disabled.

FTA clarifies that a tier I provider has 101 or more fixed-route vehicles in peak revenue service, or has 101 or more non-fixed route vehicles in peak revenue service. To calculate, the fixed-route vehicles and non-fixed route vehicles should be considered separately. For example, an urbanized area transit provider with no rail service, 80 fixed-route vehicles, and 35 non-fixed-route vehicles (for a total of 115 vehicles) would be considered a tier II provider. This clarification makes the calculation consistent with how the calculation for operating assistance eligibility in large urbanized areas is calculated.

Therefore, FTA believes this rule limits the administrative load on smaller transit agencies and has clarified that tier definitions are based on the type of services a provider offers either, fixed route (*e.g.* busses) or non-fixed route (*e.g.* paratransit cutaways) peak revenue vehicles.

FINAL RULE:

FTA has revised the definitions transit provider, tier I provider, and tier II provider in the final rule.

COMMENTS: Definition of "Transit Asset Management"

A transit operator said this definition should also include "disposing" in the list of specified lifecycle stages. Two commenters suggested that FTA revise this definition to read in part ". . . costs over their life cycle in order to provide safe, cost-effective, ADA-compliant, and reliable service."

FTA'S RESPONSE: Definition of "Transit Asset Management"

FTA proposed a comprehensive definition of the term "transit asset management," which can be applied to a number of activities, including ensuring that an asset is ADA-compliant. FTA does not believe that adding the language proposed in the comments is necessary.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENT: Definition of "Transit Asset Management Policy"

One commenter suggested modifying the proposed language defining TAM policy to avoid implying that every agency that falls under this rule is out of SGR.

FTA'S RESPONSE: Definition of "Transit Asset Management Policy"

FTA did not intend for the proposed definition to imply that every agency that falls under the rule is not in a state of good repair. In fact, FTA purposely proposed an asset-based definition, as opposed to a system-based definition, in order to make achieving and maintaining a state of good repair an achievable goal.

FINAL RULE:

FTA has revised the definition in the final rule to clarify that a TAM policy and the final rule applies to a provider whose entire inventory of capital assets is in a state of good repair.

COMMENTS: Definition of "Transit Asset Management System"

Two MPOs recommended removing "operating, maintaining, and improving" from the definition and replacing it with "managing the use of." A transit operator recommended that FTA revise this definition to replace the word "system" with "program," reasoning that "system" implies that a software package is necessary for asset management, which the commenter asserted is counter to other recommendations made by FTA. Another commenter expressed support for the proposed definition.

FTA'S RESPONSE: Definition of "Transit Asset Management System"

The proposed definition of the term transit asset management system was derived from the statute, 49 U.S.C. 5326(a)(3). FTA believes that the statutory definition is sufficient.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definition of "Transit Provider"

Several State DOTs and other commenters suggested that FTA clarify the definition of "transit provider" by adding, "A State is not considered to be a transit provider by virtue of passing on funds to subrecipients, administering the programs under 49 U.S.C 5310 and 5311, developing and implementing a TAM plan, or taking any other steps required of a State by this or other FTA rules."

Two commenters recommended that FTA revise the definition to specify "capital assets used in the "provision of *all modes* of public transportation."

A State DOT expressed concern that because the definition of "transit provider" includes operators providing services under the 49 U.S.C. 5310 and 5311 programs, there would be double reporting by the transit providers and the State sponsors of the group TAM plans in which the transit providers are included.

FTA'S RESPONSE: Definition of "Transit Provider"

In the NPRM, FTA proposed a definition of the term "transit provider" meaning "a recipient or subrecipient who owns, operates, or manages capital assets used in the provision of public transportation." A transit provider must provide transit service, either directly or through a third-party, not merely pass funds through to a transit provider or develop a group TAM plan.

FTA proposed that a sponsor satisfy the reporting requirements on behalf of its group plan participants. Alternatively, any transit provider that develops its own individual plan, including eligible tier II providers that choose to opt-out of a group TAM plan, must report directly to the NTD.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definition of "Useful Life Benchmark"

Several State DOTs recommend removing the word "acceptable" from the definition, reasoning that it could lead to arguments that operation past that period is "not acceptable." If this term cannot be removed, these commenters suggested that at a minimum the final rule should include a statement that the use of the term "acceptable" in the definitions of "useful life" and "useful life benchmark" "are solely for general asset management planning purposes."

A transit operator supported the establishment of a ULB as the proxy for the condition of revenue vehicles but recommended that FTA's guidance reflect that age is only one aspect that affects SGR. According to this commenter, other factors include usage (including passenger loads, service hours/miles) and operating conditions (including topography and stop frequency). Similarly, another transit operator expressed concern that the ULB assessment threshold based on an asset's age is problematic in that a set of rolling stock may be beyond its ULB yet remain roadworthy and safe as a result of the agency's maintenance practices. The commenter said this could discourage agencies from utilizing strong maintenance practices, as even a well-maintained bus or rail vehicle would fail the test of age-based asset condition reporting. One transit provider suggested that FTA revise the definition of ULB to include both safety and cost effectiveness.

Another transit operator urged FTA to allow for recognition of obsolescence in defining ULB by ensuring flexibility that would allow individual transit systems to adjust ULBs based on changing conditions or changes in technology lifecycles. Further, this commenter recommended that FTA should allow an exception for the ULB to be less than the minimum life in FTA's formula programs to account for impacts due to obsolescence if justified with proper documentation. Similarly, a transit operator commented that a ULB could be less than the minimum useful life used in FTA's formula programs and may also be different from agency depreciation schedules, which are set when the assets are placed on the agency's books.

A transit operator stated that while ULB works well for most of the capital assets, it is challenging to define it based on traditional replacement standards for some assets, such as historic streetcars. This commenter recommended that FTA add language to the ULB definition that includes "or when they are considered renewed to a good condition."

A local government recommended that FTA create a ULB table specific to regions from which transit providers can base their performance and set targets to reduce the potential wide swings from one similar provider to the next.

Two commenters suggested that FTA consider referencing compliance with ADA requirements as set forth in 49 CFR parts 37, 38, and 39.

FTA'S RESPONSE: Definition of "Useful Life Benchmark"

A ULB takes into consideration both the age of an asset and its operating environment. Consideration of the asset's operating environment allows transit providers to develop performance targets that reflect their specific operating environments. Transit providers operate their assets in diverse environments, where the geography, frequency of service, passenger loads, etc. will vary. Therefore, a general national standard may not adequately address asset condition. For example, a transit provider that operates for only 4 hours per day would have different vehicle conditions than a transit provider that offers 24-hour service, even if the vehicles for both providers are the same age. As a result, the estimate of a vehicle's useful life also may be different. The ULB framework enables a transit provider to report its performance and set targets for its performance on a scale that is tailored to it.

The term "acceptable" in the proposed definition of ULB was intended to allow a transit provider the ability to define their own period of use based upon their operating environment. A transit provider should establish a ULB by taking into consideration the operating environment of its assets, historical evidence, manufacturer guidelines, and any other relevant factors. Transit providers may elect to use the default ULB for assets, which is derived from FTA's TERM.[10] If an asset exceeds its ULB, then it is an indicator that it may not be in a state of good repair.

FTA agrees that age alone is not the only aspect that affects SGR and will provide guidance to assist transit providers in developing their own ULBs to reflect their operating conditions, which may include the considerations provided by commenters, historical evidence, and manufacturer guidelines.

FTA agrees with the commenter that suggests an asset may be roadworthy and safe as a result of its agency's maintenance practices. A transit provider may develop its own ULB which reflects its maintenance practices. FTA will provide default ULBs, and encourages providers to develop their own customized ULBs. Once a provider establishes its ULB, it is entirely possible that over time and changes in their policies and practices, the transit provider may need to establish a revised ULB and submit it to FTA for approval.

FTA did not propose to change the useful life requirements for vehicle replacement under FTA's grant programs. A ULB is distinct from the term "useful life" or "minimum useful life" that applies to FTA grant programs. Under FTA grant programs, "useful life" refers to the Federal financial interest in a capital asset, which is based on the length of time in service or accumulated miles. Generally, assets are not eligible for replacement with FTA funds until they have met or exceeded their minimum useful lives. A ULB, however, takes into consideration operational factors, discussed above, that may impact the condition of a capital asset. Thus, a ULB that is less than the useful life for grant programs may impact a transit provider's ability to maintain their SGR targets.

The proposed rule would have required a transit provider to consider ADA requirements in the development of its investment prioritization. FTA has determined that referencing ADA compliance in the definition of ULB is not feasible.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definitions—Other Comments

Two transit agencies and an anonymous commenter requested a definition for "non-revenue vehicles". Another transit operator suggested that FTA consider adding a definition for "asset condition" to mean "reflects the physical state of the asset, which may or may not affect its performance." A transit operator suggested that the list of definitions should be numbered subparagraphs.

FTA'S RESPONSE: Definitions—Other Comments

FTA did not propose definitions for "non-revenue vehicles" or "asset condition" because both terms are commonly understood within the transit industry.

The structure of the definitions section is consistent with the structure of the definitions sections in previous FTA regulations.

FINAL RULE:

FTA did not make any changes to the final rule based on these comments. However, FTA has added a definition of "service vehicle" in the final rule. In addition FTA has modified the definition of "Performance Measure" and "Performance Target" to match the definitions in the coordinated FHWA and FTA Metropolitan and Statewide and Non-Metropolitan Transportation Planning final rule.

625.15 Elements of the National Transit Asset Management System

This section proposed the elements of the National TAM System as set forth at 49 U.S.C. 5326(b). FTA will establish performance measures, transit providers will set targets, and transit providers will report their targets to FTA's NTD. The performance management and reporting components of the National TAM System are important for assessing both the benefits of transit asset management on a National level and the transit industry's current SGR needs.

COMMENTS: 625.15 Elements of the National Transit Asset Management System

A couple of commenters agreed with the elements of the National TAM System as specified in proposed § 625.15. A State DOT appreciated the flexibility given to transit providers to develop SGR performance measures and performance targets.

Regarding paragraph (d), a transit operator said FTA should allow industry best practices (for example ISO) to be the basis of analytical processes and decision tools. The commenter suggested that the paragraph could indicate FTA "or equivalent" best practices.

FTA'S RESPONSE: 625.15 Elements of the National Transit Asset Management System

FTA appreciates the comments on the elements of a proposed National TAM System. FTA currently is developing guidance and other resources that will aid the industry in its implementation of the requirements of this final rule. FTA is aware that other organizations have developed resources for asset management and encourages transit providers to research those options and use them, as appropriate, to aid in the implementation of the requirements of this final rule.

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[10] The TERM model consists of a database of transit assets and deterioration schedules that express asset conditions principally as a function of an asset's age. Vehicle condition is based on an estimate of vehicle maintenance history and major rehabilitation expenditures in addition to vehicle age; the conditions of wayside control systems and track are based on an estimate of use (revenue miles per mile of track) in addition to age.

FINAL RULE:

FTA is including this section in the final rule without substantive change.

625.17 State of Good Repair Principles

FTA proposed SGR principles intended both to highlight the relationship of SGR to other transit priorities and to guide a transit provider's practice of transit asset management. SGR is related to, but not synonymous with, TAM and is a condition that can be achieved through good TAM practices. TAM practices inform the capital investment planning and programming processes by producing data that informs investment prioritization. TAM allows a transit provider to realistically predict the impact of its policies and investment decisions on the condition of its assets throughout an asset's life cycle. TAM enhances a transit provider's ability to maintain a state of good repair and proactively invest in its assets before the asset condition deteriorates to an unacceptable level.

A key connection of SGR to TAM is performance management. Asset management is a business model that uses the condition of assets to determine the finances needed in order to achieve predetermined outcomes. In the case of TAM, and this rulemaking, the goal is to achieve and maintain a state of good repair. A key focus of asset management is cost-risk balancing to achieve performance goals through a transparent, organization-wide process of decision-making.

TAM provides a framework for how to maintain a state of good repair by considering the condition of assets in the transit provider's inventory and the transit provider's local operating environment, along with the policies that a transit provider establishes for prevention, preservation, rehabilitation, disposal, and replacement. TAM allows a transit provider to realistically predict the impact of their TAM and maintenance policies on the condition of their assets and how much it would cost to improve asset condition at various stages of an asset's life cycle, while balancing prioritization of capital, operating and expansion needs.

COMMENTS: 625.17 State of Good Repair Principles

Several commenters expressed concern about the use of the term "full level of performance" in § 625.17(a) and (b) (and elsewhere in the rule). Some commenters said FTA should instead use the term "required level of performance" and others suggested "fit for intended purpose." Another commenter suggested that the second sentence of § 625.17(a) be removed because the "state" of an object is the condition at any point in time without respect to any previous or future conditions. A transit operator said § 625.17(a)'s emphasis on life-cycle maintenance as a determining factor in assessing a capital asset's SGR would amount to establishing a misleading "bright line measurement tool" based on an asset's maintenance schedule. A State agency said, due to increased financial constraints, providers may be managing the decline of assets. The commenter said the rule should include specific language stating that without additional financial resources, establishing an asset management plan may not in itself enable a provider or a group to reach a SGR.

Several commenters provided input on § 625.17(c), expressing concern about how this paragraph affects the role of the accountable executive. A professional association and several State DOTs said the provision for a transit provider's accountable executive to "balance transit asset management, safety, operation, and expansion needs" should use the word "consider" rather than "balance," to help ensure, for example, that an executive does not have to put some funding into expansion in order to "balance" that factor. A State agency said safety should be given a higher level of consideration than other agency needs (*e.g.,* expansion of service). Some of these commenters said this paragraph underscores the importance of a State not being construed as a "transit provider" if it is not an operator (directly or through operating contracts) of public transit service.

A few commenters noted that the SGR principles (§ 625.17), SGR standards (§ 625.41) and SGR performance measures (§ 625.43) do not appear to be consistent. In each case, according to these commenters, SGR is defined or measured differently. A couple of these commenters said this is not a concern, as long as affected agencies and the departments understand the differences, and suggested that inserting compliance with ADA requirements as set forth in 49 CFR parts 37, 38, and 39 may also strengthen this definition.

Regarding the proposal that each transit provider determine whether they have achieved a state of good repair regarding their assets, a State transit association said this is too subjective and base perimeters need to be set, as well as having third party determinations. Similarly, a transit operator stated that, if an asset's SGR is determined by the agency without a clear definition and validation by FTA, there will be very little value in the determination.

A couple of commenters said the SGR status of an asset should not be affected by the condition of the other assets in the same category.

FTA'S RESPONSE: 625.17 State of Good Repair Principles

FTA has addressed the "full level of performance" comments previously, in the definition section.

FTA disagrees that the term "state" should be removed from the "state of good repair" in § 625.17(a). This section describes the principles of SGR and removing state would be misleading. However, FTA does agree with the commenter that the state of an asset is a condition at a point in time. The intent of this section is to describe the principles supporting SGR and their relationship to TAM.

FTA disagrees that elevating the importance of lifecycle investments would establish a misleading emphasis on an asset's maintenance schedule, although effective and proactive lifecycle investment and maintenance practices are fundamental to SGR. The proposed SGR definition contained three objective standards and maintenance schedules relate directly to just one; the lifecycle maintenance needs being met or recovered. While FTA recognizes that the maintenance of an asset is not the only relevant factor in determining SGR, it is critical to achieving and maintaining a state of good repair.

FTA disagrees that a third-party determination is necessary to measure a transit provider's' SGR. FTA believes the objective standards are the base parameters for a transit provider to measure its SGR. FTA did not propose that it would validate a transit provider's SGR determination.

FTA agrees that financial constraints may leave a transit provider in the position of managing the deterioration of assets that it can no longer afford to maintain and replace on a timetable that sustains the assets' full level of performance. The proposed SGR principles do not preclude the management of declining asset condition. In some instances, FTA expects that maintaining an asset's condition may not be a transit provider's highest priority, and therefore the asset's condition may decline based on strategic and informed decisions.

FTA agrees that a sponsor is not an accountable executive merely because it develops a group TAM plan. Each transit provider has its own accountable executive. FTA does not agree that it should change "balance" to "consider" because the change would make no substantive difference. In order to balance transit asset management, safety, operation and expansion needs, an operator must consider a number of things, including financial and human capital resources.

FTA disagrees that the proposed SGR principles (§ 625.17), standards (§ 625.41) and performance measures (§ 625.43) are inconsistent. These three sections described the fundamental principles of SGR and its relationship to TAM (§ 625.17); the definition and objective measures for a transit provider to measure their assets' SGR (§ 625.41); and the description of performance measures for which FTA will collect targets (§ 625.43). As discussed above, the SGR performance measures are a proxy for the SGR, nationally. The proposed SGR definitions were intended to standardize the term and its objective measures. The SGR principles are provided to describe the foundation of the SGR definition and its relationship to TAM. The performance measures are provided to describe a transit providers' obligation to establish and report targets.

FINAL RULE:

FTA is including this section in the rule without substantive change. FTA is including an example in Appendix B to the final rule to illustrate the relationship amongst the measures, definition and principles.

Section 625.25 Transit Asset Management Plan Requirements

Pursuant to 49 U.S.C. 5326(b)(2), the NPRM proposed all recipients and subrecipients of Chapter 53 funds must develop a TAM plan. FTA interpreted this requirement to apply only to those recipients and subrecipients that actually operate public transportation systems and own, operate, or manage capital assets for that system. Therefore, the TAM plan requirements do not apply to an MPO that merely receives funds from FTA and passes the funds along to transit operators. However, a pass through MPO would be required to sponsor a group TAM plan for its eligible tier II subrecipients. Accordingly, § 625.25(a) required each transit provider that owns, operates, or manages public transportation capital assets to develop and carry out a TAM plan.

The NPRM proposed that tier II providers have the option to participate in a group TAM plan. The group TAM plan concept is intended to reduce the burden on smaller operators associated with developing individual TAM plans. Under a group TAM plan, a sponsor (typically a State, or direct recipient) develops a single group TAM plan on behalf of one or more tier II providers. Each tier I provider, including group TAM plan sponsors, that operates or manages capital assets must develop its own individual TAM plan for its own system. Under all circumstances, it is the responsibility of the relevant State or MPO to integrate the TAM plans (group or individual) into the statewide and metropolitan transportation planning process.

It is the responsibility of each transit provider's Accountable Executive to ensure that the TAM plan is carried out at his or her organization. For those transit providers that develop an individual TAM plan, the Accountable Executive is responsible for making informed investment decisions and ensuring that meaningful SGR targets are set. The Accountable Executive for a group TAM plan participant is responsible for coordinating development of the group TAM plan with the sponsor, and for implementing the TAM plan at their transit agency. This coordination may involve providing accurate asset inventory data, maintenance and repair records, or other relevant data to the sponsor. It may also involve participating in development of targets for the group and negotiations about investment priorities.

Section 625.25(b) listed elements of a TAM plan, including:

1. An asset inventory, which is a list of the transit provider's capital assets;
2. A condition assessment, which is a rating (*e.g.*, good/fair/poor or percentage of residual life) of the condition of assets in the inventory. The NPRM did not speak to the condition rating scale or process a transit provider should use;
3. A list of the decision support tool or tools that were used to create the TAM plan. A decision support tool is a methodology to help transit providers make decisions, such as prioritizing projects based on condition data and objective criteria. A decision support tool can be software, but is not exclusively software. A decision support tool may be a process;
4. An investment prioritization. The investment prioritization is a list of the proposed projects and programs that a transit provider estimates would achieve its SGR goals, and a ranking of the projects and programs based on priority;
5. An identification of the transit provider's policies and strategies for developing an effective TAM plan, including a transit provider's executive-level directions to set or support the goals for its TAM plan;
6. A strategy for implementation of the TAM plan, which is the process a transit provider identifies to follow in order to achieve its TAM plan. This strategy differs from the strategies identified in element (5) in that this is an operation-level decision;
7. A list of the key activities or actions that are critically important to achieving the transit provider's asset management goals for the year (*—e.g.*, management-supported activities such as purchasing software or training);
8. An identification of the financial resources that a transit provider estimates are necessary for implementing its TAM plan and achieving its asset management goals. This might include internal staff time, technology requirements, etc.; and
9. A continuous improvement plan that sets timelines and milestones that can be revisited to track the transit provider's progress towards meeting its asset management goals.

The first four elements relate to identifying performance goals, while elements 5 through 9 relate to the implementation of TAM concepts. To reduce the burden on smaller transit providers, a TAM plan for a tier II provider or other eligible group TAM plan participant is required to include only elements 1 through 4. The majority of the SGR backlog exists in capital assets at larger transit systems, particularly those with rail fixed-guideway public transportation systems. As a result, FTA believes that these larger, complex operations require a more holistic and strategic process, addressed through elements 5 through 9, for consideration of asset conditions throughout the asset's life cycle, as well as institutionalization of TAM principles. Although not required, FTA nevertheless still recommends that tier II providers incorporate elements 5 through 9 as best practices.

Section 625.25(b)(1) required that each TAM plan include an inventory of the transit provider's capital assets. The asset inventory is expected to cover the capital assets that a transit provider owns, operates or manages, including leased assets and those assets operated under contract by an external entity. This asset inventory may be a combination of other inventories a transit provider may have on hand. For example, the grant management guidance circular 5010 requires grantees to collect, maintain, and report records for rolling stock and equipment. This existing inventory could be used to initiate or refresh the capital asset inventory to satisfy the requirements of the proposed rule.

Section 625.25(b)(2) required that each TAM plan include a condition assessment of capital assets that generates information in a level of detail sufficient to monitor and predict the performance of each capital asset identified in the asset inventory. Condition assessments are required for only those capital assets in the asset inventory for which a transit provider has direct financial responsibility. This section does not prescribe how a condition assessment must be conducted, rather the required result of the assessment. It is up to the transit provider or group TAM plan sponsor to decide whether to conduct condition assessments at the individual or asset class level.

COMMENTS: TAM Plan—Role of Accountable Executive in Development of TAM Plan

Several commenters addressed the proposed role of the Accountable Executive in the development of TAM plans at § 625.25(a)(3). A State transit association asserted that the TAM requirements of Accountable Executive, decision support tools, etc. will result in more transit providers under the 49 U.S.C. 5310 program disengaging from coordination efforts and "siloing," as was seen with the Community Development Transportation Coordination Plan requirements. A transit provider agreed that a responsible executive should approve the plan, but requested flexibility with regards to where the responsible executive sits within their organization.

FTA'S RESPONSE: TAM Plan—Role of Accountable Executive in Development of TAM Plan

FTA estimates that approximately 80 percent of 49 U.S.C. 5310 providers will be exempt from this rule because as providers of closed-door service to a specific group or specific program, they are not considered providers of public transportation. Almost all other 49 U.S.C. 5310 providers fall into the tier II category, eligible to participate in a group TAM plan with reduced requirements. The group TAM plan option is intended to reduce the administrative burden on smaller providers associated with developing a TAM plan.

An Accountable Executive should be a transit provider's most-senior executive; often times this person is the CEO or GM. FTA understands that at many smaller transit providers, roles and responsibilities are more fluid. However, FTA does believe that, even in circumstances where responsibilities are either shared or delegated, there must be one primary decision-maker.

FINAL RULE:

FTA is revising 625.25 (a)(3) to clarify the role and responsibilities of complying with this final rule for group plan sponsors and participants is a local level decision.

COMMENTS: TAM Plan—Coordination With State and Metropolitan Planning Organizations (MPOs)

Some public comments addressed the proposed requirement that a TAM plan must be coordinated to the extent practicable with States and MPOs at § 625.25(a)(4). A transit operator said that the role of the MPO should be to aggregate the transit operators targets, prioritization, performance and condition information, etc. to form the MPO's targets and priorities. This commenter stated that it should be a bottom up approach from the transit operators rather than top down imposition of goals from the MPO. A transit operator asked if the State and MPO would now be required to include local transit operators' asset planning in their TAM plan and, if so, whether the transit operator is required to follow the State/MPO recommendations. Another transit operator recommended that FTA revise § 625.25(a)(4) to state that the "TAM will be used to inform the grantee's portion of the MPO TIP, to the extent practicable." An industry association predicted that it is unlikely that States and MPOs could incorporate TAMs in their STIPs and TIPs within the proposed timeline. A transit provider requested clarification about the role of MPOs in setting investment priorities. A State DOT asked if the State can reject a provider's priorities if they do not meet the state's investment priorities.

A State DOT and an industry association asked that FTA provide an example of when the MPO would have the responsibility for integrating group TAM plans and when it is a State responsibility. One of these commenters stated that it believes it is ultimately the State's responsibility. An MPO recommended strengthening the requirements for TAM plan developers to coordinate with the MPO. The specific regulatory language recommended by this commenter is "A TAM plan developed under this part should/shall be developed cooperatively coordinated, to the extent practicable, with States and Metropolitan Planning Organizations." A transit operator suggested that continuous coordination with States and/or MPOs on TAM plans, asset data, finances, and strategies should be restricted to documents and processes where the State and MPO can directly contribute and play a role.

FTA'S RESPONSE: TAM Plan—Coordination With State and MPOs

MAP–21 fundamentally shifted the focus of Federal investment in transit to emphasize the need to maintain, rehabilitate, and replace existing transit investments. The ability of FTA grant recipients, along with States and MPOs, to both set meaningful transit SGR performance targets and to achieve those targets is critically dependent upon the ability of all parties to work together to prioritize the funding of SGR projects from existing funding sources. How a transit provider sets its performance targets is an entirely local process and decision. However, FTA strongly encourages transit providers, States, and MPOs to set meaningful progressive SGR targets based on creative and strategic leveraging of all available financial resources.

This rule does not prescribe requirements for how States and MPOs should integrate TAM plans or targets into the planning process. The rule requires transit providers and sponsors to coordinate with States and MPO's to the extent practicable in the selection of State and MPO SGR performance targets. However, the NPRM suggested that transit providers and sponsors coordinate individual and group TAM plans, respectively, with the relevant State or MPO to aid in the planning process. FTA clarifies that coordination of TAM plan development with States and MPOs is optional by removing regulatory language for transit providers to coordinate to the extent practicable. Early coordination with planning partners is encouraged but not required under this rule.

The joint FHWA/FTA final planning rule prescribes requirements for incorporating components of the National TAM System into the planning processes. FTA and FHWA will develop and issue guidance to aid the transit industry in its implementation of the performance-based planning requirements.

FINAL RULE:

FTA has removed § 625.25 (a)(4) from the final rule in response to these comments.

COMMENTS: TAM Plan—Responsibilities for Development of TAM Plans

Some public comments addressed other issues relating to responsibilities for the development of TAM plans. An anonymous commenter asked whether the following entities must develop their own TAM plan or whether they could be a member of a group TAM plan: (1) a tribal agency that receives both funding from FTA as a direct recipient and funding from the State DOT as a subrecipient under the 49 U.S.C. 5310 or 5311 programs, and (2) an inter-city agency that receives 49 U.S.C. 5310 funds and serves several States.

FTA'S RESPONSE: TAM Plan—Responsibilities for Development of TAM Plans

All tier II providers are eligible to participate in a group TAM plan. Although Group Plan sponsors are not required to include those tier II providers that are also recipients of 49 U.S.C. 5307 funds, a sponsor may allow those tier II providers to participate in a group plan. A transit provider with only 30 vehicles operated in regular, peak, fixed route service that receives both Section 5307 urbanized area formula funds and Section 5311 rural area formula funds from multiple states, remains a tier II provider. A Tribe that receives funds directly through the Tribal Transit Program remains a tier II provider, regardless of other funding received. FTA notes that intercity bus providers are not providers of public transportation, and are therefore exempt from the rule.

FTA recognizes the commenter's confusion in determining the appropriate tier in certain instances and has clarified the definitions of tier I and tier II and is providing the following examples: (1) A transit provider that is a subrecipient of 49 U.S.C. 5311 funds only, but has 150 vehicles and no rail service, is a tier II provider and eligible to participate in a group TAM plan sponsored by a State. (2) a transit provider that is a subrecipient of funds under 49 U.S.C. 5310, 5311, or 5339 with a fleet of 30 vehicles and no rail service, is a tier II provider and eligible to participate in a group TAM plan sponsored by a sponsor. (3) a transit provider that is a subrecipient of funds under 49 U.S.C. 5307 and 5311 with 110 vehicles and no rail service, is a tier II provider, but is only eligible to participate in a group TAM plan through consent of sponsor.

FINAL RULE:

FTA is revising the definition of tier II provider in the final rule to clarify that all American Indian tribes are considered tier II providers and are eligible to participate in a group TAM plan, regardless both of the source of funding it may receive and of its status as a recipient or subrecipient.

COMMENTS: TAM Plan—Asset Inventory

Several public comments addressed the asset inventory required by proposed § 625.25(b)(1), with several expressing concerns or confusion relating to the expected level of granularity at which transit agencies would be expected to inventory capital assets. A transit provider and several State DOTs asserted that "the level at which a project would be identified in a provider's program of capital projects" is too vague and could lead to confusion because "program of capital projects" is not a defined term.

Two associations and several State DOTs recommended that the final rule include a clearly worded provision that would limit the coverage of the rule to important assets. At least for non-rail assets, these commenters recommended that FTA:

1. Limit coverage to revenue vehicles and to assets other than revenue vehicles with an initial cost of at least $50,000.
2. Limit coverage of assets other than revenue vehicles to those with an initial minimum ULB of at least 5 years.
3. Limit coverage of assets other than revenue vehicles by excluding office space or other administrative support facilities or equipment (and by not including an "administrative" line item in Appendix A to part 625).

Similarly, a transit operator stated that the proposed definition of "equipment" would include office chairs, storage cabinets, and other incidental "equipment," that are not worth investing in data capture and management. The commenter recommended a risk-based approach to prioritize detailed data collection for more important assets (*e.g.,* trackway and rail vehicles) and limited data collection for less important assets (*e.g.,* office chairs).

A transit operator requested that FTA clarify the level of detail required in reporting asset data, asserting that it is described differently in sections 625.5 and 625.25(b)(1). Another commenter asked whether it could simply list a bus or whether it needed an inventory for all equipment installed on the bus post-manufacture (*e.g.,* Drive Cam, cameras, fare box, radios, CAD/AVL). This commenter also asked if a vehicle camera system would be classified in the rolling stock or equipment categories. An MPO said that the final rule should either confirm that the TAM plan sponsor has flexibility in defining the granularity of the asset inventory or FTA should provide additional guidance as part of the final rulemaking.

A couple of commenters requested additional clarity on the definition of equipment, stating that it is different in §§ 625.5, this section, and 625.43.

One of these commenters, a transit agency stated that guidance is necessary for consistency and suggested that FTA could have transit agencies report at a systems-level (*i.e.,* electrical, plumbing, building envelope, roof, lifts, etc.) for facilities/stations, and by miles or linear feet of ROW for specific types of infrastructure assets. Further, the commenter suggested that substations could be reported both as a facility (broken out by systems) with the traction power equipment identified separately based on age and type. This transit agency asserted that by specifying a concrete approach that is replicable across agencies, FTA would ensure that data sets from various agencies can be merged at the national level and aggregated. Another transit operator suggested that transit agencies consider asset attributes in the development of an asset inventory, reasoning that otherwise performance targets would be difficult to establish.

Expressing concern about the ability for transit operators to have completed a full asset inventory within the 2-year deadline, a transit operator requested clarification on whether a full inventory would need to be submitted with the first TAM plan.

A regional transit operator commented that it will take all prudent steps to complete the data inventory for its contracted assets; however, some of the information may be considered proprietary and the private carriers may not be willing to share it due to liability issues.

FTA'S RESPONSE: TAM Plan—Asset Inventory

FTA disagrees with the commenters who suggested that FTA only require the asset inventory to include assets above a specific monetary threshold. This final rule does not prescribe a level of detail for the asset inventory. Instead, the rule requires that the disaggregation of a divisible capital asset be identified in a manner that is consistent with the assets identified in a transit provider's program of capital projects. If an asset is "large" enough that a transit provider includes it in its capital program, then it should be included in its asset inventory. However, FTA has added clarity for the equipment asset category of what to include in the asset inventory. Specifically, only transit provider owned equipment assets over $50,000 and all non-revenue service vehicles regardless of value must be included in a TAM asset inventory. FTA encourages transit providers to include additional equipment assets that impact safety and operations to be considered alongside other equipment assets in their TAM plan elements.

FTA does not believe that the final rule needs to include a definition of program of capital projects. Each transit provider regularly undergoes capital planning and programming activities to determine needs for the following year. FTA understands that each transit provider's planning and programming process may be unique, and as a result, the final rule provides the flexibility for each transit provider to fulfill the asset inventory requirement without imposing a one-size-fits-all process for identifying capital assets.

Readers should understand that there is a distinction between the categorization of an asset (*i.e.* whether it meets the definition of equipment, infrastructure, rolling stock, or a facility) and whether or not a transit provider must include the asset in its asset inventory. Categorization of an asset is also distinct from whether or not a transit provider must set an SGR performance target for the asset (tabular illustration in Appendix C—Table 1). The final rule requires each transit provider to include in its asset inventory infrastructure, all non-revenue service vehicles regardless of value and owned equipment assets over $50,000, at a level of detail commensurate with its program of capital projects, and conduct a condition assessment of those assets for which it has capital responsibility. However, at this time, the performance measure for infrastructure is limited to rail fixed guideway assets and the performance measure for equipment is limited to non-revenue service vehicles. Therefore, a transit provider that does not operate a rail fixed guideway transit system would not have to set an SGR performance target for its non-rail infrastructure assets nor any equipment other than non-revenue service vehicles.

FTA further clarifies the asset inventory must include all revenue vehicles, all passenger stations, all exclusive use maintenance facilities, all non-revenue service vehicles and provider owned equipment over $50,000, regardless of funding source. Also see FTA's response to definition of "Capital Asset" for an extended discussion.

An illustrative example of the relationship between asset inventories, condition assessments and SGR performance measures is found in Appendix C—Table 2.

FINAL RULE:

FTA is revising § 625.25(b)(1) to clarify which assets (including but not limited to all revenue vehicles, all passenger stations, all exclusive use maintenance facilities, and provider owned equipment over $50,000 including all non-revenue service vehicles regardless of value) used in the provision of public transportation must be included in an asset inventory, at a level of detail commensurate with the level of detail used to describe assets in a transit provider's program of capital projects.

COMMENTS: TAM Plan—Condition Assessment

A State DOT and an individual commenter recommended that § 625.25(b)(2) should include a universal condition rating scale. A State agency said it is important to develop objective methodologies to evaluate asset condition and to establish a link between those assessments and an investment prioritization plan.

Several transit operators said the asset condition assessment must be more flexible. Two transit operators said FTA should allow transit operators to adopt a more rigorous means of condition assessment than age and ULB and report the results of their local assessment process. Two State DOTs and other commenters recommended allowing condition assessments to be made at the class level, rather than by individual projects, because targets are set at the class level. Another transit operator expressed support for FTA's proposal for allowing transit providers to choose a method or methods for conducting condition assessments, provided that the level of detail is sufficient to monitor the performance of capital assets. One transit company assumed that because the rule is silent with respect to how condition should be determined, any method is acceptable.

Several commenters requested guidance on condition assessment. A transit operator asked if FTA will provide condition assessment guidance and what method of tracking should transit agencies follow. A transit agency similarly expressed concern that "condition" alone is vague, subjective, and open to individual interpretation and requested additional direction regarding condition assessment. An individual commenter requested a minimal condition assessment outline for guidance and to provide consistency. In particular, another transit operator asked to what level of detail service providers are expected to break down facilities and stations and their components for the purpose of the facilities asset category performance measure condition assessment, and whether the standard of condition being ≥3.0 would apply to the whole facility (*e.g.,* a weighted average of all its components). A transit agency requested additional guidance on condition assessments for facilities but also requested that the guidance be flexible to allow current assessment processes to apply. A transit agency asked if actual condition of the asset is required or if age would be an acceptable substitute. The commenter also asked if other proxies, as determined by the implementing agency, would be acceptable in lieu of physical condition.

A State DOT said that the requirement to use a 1–5 TERM scale is inconsistent with the NPRM preamble, which states that transit providers may continue to use their own existing condition rating systems. This commenter requested clarification on this point, TERM training, and a conversion mechanism for ratings arrived through other assessment mechanisms. Similarly, a transit agency recommended that FTA develop criteria for assessing asset condition utilizing the TERM scale, recommending that the TERM condition of 2.5 be set as the minimum for which an asset is in a state of good repair, to remain consistent with previously published FTA guidance.

A transit operator said that whole collection of actual asset condition data would be useful in the establishment of targets and investment prioritization, and that particular focus should be paid to performance of the asset relative to its designed purpose and cost effectiveness. This commenter asserted that using age, mileage, standard replacement, and maintenance schedules as a condition assessment does not keep to the intent of MAP–21. The commenter suggested that FTA define "condition assessment" in a manner that may include age and mileage information. In its own assessments, this transit operator explained that it also uses fluid analysis and corrosion inspections to determine the remaining useful life of rolling stock assets. This commenter suggested that condition assessments along with performance-based monitoring be used for measuring the condition of infrastructure.

A transit operator stated that the text implies that that the condition assessment should be informed by the SMS. The commenter expressed concern that because this requirement ties the evaluation of safety risk to another proposed regulation, the application of SMS to the National TAM System is not definitive until the SMS rule is final.

A transit operator said the preamble discusses the TAM requirement for a condition assessment that must identify a safety hazard or failure to meet ADA requirements related to the use of that capital asset. The commenter said the requirement to include this sensitive data and analysis in the public TAM document could potentially expose a transit agency to risks that could compromise the agency and its efforts to keep assets in a state of good repair.

FTA'S RESPONSE: TAM Plan—Condition Assessment

FTA has provided flexibility for condition assessments so individual transit providers and sponsors can determine the most effective methodology to use for their circumstances. A universal condition rating scale would not support this intent. FTA agrees that it is important for a transit provider to develop objective methodologies to evaluate asset condition. FTA is developing guidance to assist transit providers with developing these methodologies, but the final rule does not establish a universal condition rating scale.

It is important to note the differences between the TAM plan condition assessment requirement and performance measure development. For the TAM plan asset inventory, FTA only requires that "a condition assessment generates information in a level of detail sufficient to monitor and predict the performance of capital assets." Conversely, the performance measures are not reflective of the entire asset inventory, only those specific asset classes related to the performance measures. For facilities the performance measure includes: (1) Administrative and maintenance facilities as well as (2) passenger and parking facilities. The equipment performance measure only includes non-revenue service vehicles. The rolling stock performance measure includes all revenue vehicles, by mode. Lastly, the infrastructure performance measure only includes rail fixed guideway. See also Appendix C_Table 1 and 2.

FTA asked the industry a number of questions regarding measuring condition in the ANPRM and analyzed those responses in the NPRM. The resulting performance measures represent a range of condition measurement approaches from simple to complex. FTA does not require sophisticated condition measurement methodologies for the TAM plan element or for SGR performance measures, but encourages transit providers of sufficient experience and sophistication to pursue more complex condition assessments based on more than age and mileage for rolling stock as well as other asset categories. FTA recognizes that some transit providers are prepared for more sophisticated condition assessment requirements and some are not, therefore the final rule provides for flexibility. FTA agrees that condition assessments can be conducted at the class level. A transit provider may develop its own condition assessment methodologies. FTA is developing guidance for measuring facility and infrastructure conditions.

The performance measure for the facility asset category is measured by the TERM scale. However, FTA does not require that transit providers use this scale in the condition assessments required under § 625.15(b)(2). FTA declines to set the performance benchmark at 2.5, rather than 3.0, because a benchmark of 2.5 would require all transit providers to use the TERM-Lite model in order to calculate the 2.5 rating. FTA believes that this would be overly burdensome on many transit providers. The TERM scale is an integer based scale, thus a direct measure of condition 2.5 is not possible. Instead, condition ratings to one decimal point are produced by the TERM-Lite model as an estimate of condition between condition assessments. Thus, FTA is setting the benchmark at 3.0, as this will reflect the actual results being produced by transit providers carrying out their own condition assessments.

FTA does not plan to produce a TERM conversion mechanism, as there are a number of methodologies a transit provider could use for condition assessment. It would not be possible for FTA to produce conversion mechanisms for all of them. However, FTA will provide technical assistance to those transit providers who require assistance with either determining the best condition assessment methodology or adapting their existing methodology to the TERM scale for the SGR performance measure targets.

FTA agrees that there is a link between condition assessments and the investment prioritization. The condition assessment informs the investment prioritization and thus must collect the relevant information regarding the asset's ability to perform in its current condition. For example, if an asset fails to meet an ADA requirement which will increase costs associated with any program or project related to that asset class, this information is gathered at the condition assessment stage and will inform the investment prioritization. This final rule does not increase a transit provider's responsibilities under the ADA, but merely explicitly incorporates ADA accessibility assets into the TAM framework.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments. However the final rule does clarify that recipients and subrecipients are required to assess and report the condition of only assets inventoried for which the transit provider has direct capital responsibility.

COMMENTS: TAM Plan—List of Analytical Processes or Decision Support Tools

Some public comments addressed the § 625.25(b)(3) proposed requirement that a TAM plan must include the identification of which decision support tool or tools were used to create the TAM plan.

A professional association and a State DOT asked for clarification on what decision and support tools are considered appropriate and sufficient. A transit operator asked if an agency's decision support tool should prioritize investment using the same methodology that FTA has previously used to report to Congress (*i.e.*, TERM and TERM Lite). An individual commenter also urged FTA to provide guidance on this TAM plan element and asserted that requiring a description of decision support tools is shortsighted because the purpose of this section is to ask grantees to provide the method of prioritizing projects.

A transit operator asked how FTA anticipates that analytical tools will assist decision-making. Another transit operator recommended that rather than referring to "list of the" following, FTA should say "A description of the transit provider's analytical processes or decision-support tools that. . ." One transit agency said the decision support tool and methodology will result in more 5310 providers disengaging from coordination efforts and "siloing."

FTA'S RESPONSE: TAM Plan—List of Analytical Processes or Decision Support Tools

A decision support tool must be able to support development of the investment prioritization. The tool may be a documented process and does not need to be electronic. Whatever the medium, the tool should assist a transit provider in understanding its capital investment needs and in prioritizing reasonably anticipated funding towards those needs.

FTA agrees with the commenter who suggested that FTA change requirements from a listing to a description of analytical processes and decision support tools. FTA believes that this change will make it clearer that the analytical process or decision support tool need not be electronic.

FINAL RULE:

FTA is revising this section based on comments from NPRM to require that a TAM plan include a description of analytical processes or decision support tools.

COMMENTS: TAM Plan—TAM and SGR Policy

A few public comments addressed the fifth proposed TAM plan element (§ 625.25(b)(5)), which was described in the NPRM as an identification of the transit provider's policies and strategies for developing an effective TAM plan, including a transit provider's executive level directions to set or support the goals for its TAM plan. A transit operator asked what needs to be reported in response to § 625.25(b)(5) and (6) if an agency already has a TAM plan and policy.

FTA'S RESPONSE: TAM Plan—TAM and SGR Policy

The NPRM did not propose to require a transit provider to report its TAM policy to FTA. Transit providers are required to submit to the NTD an annual data report that includes the SGR performance targets for the following year and a current assessment of the condition of the transit providers' public transportation system. Transit providers are also required to submit an annual narrative report to the NTD that provides a description of any change in the condition of a transit provider's transit system from the previous year and describes the progress made during the year to meet the performance targets set in the previous reporting year. There are no additional reporting requirements under this rule.

This final rule is flexible and scalable. A transit provider may incorporate its existing TAM policies and practices into its TAM plan.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

COMMENT: TAM Plan—Strategy for Implementation of TAM Plan

A few public comments addressed the sixth proposed TAM plan element (§ 625.25(b)(6)), which was described in the NPRM as a strategy for TAM plan implementation, *i.e.,* the process a transit provider will follow in order to achieve its TAM plan. A transit agency expressed support for the inclusion of a TAM policy as part of a certified TAM plan. However, the commenter requested additional information on how to meet this non-statuary requirement without being duplicative of other TAM plan components. Without clarification, the commenter recommended removing this provision.

FTA'S RESPONSES: TAM Plan—Strategy for Implementation of TAM Plan

A transit provider's TAM plan implementation strategy should outline a plan showing the activities necessary to achieve its asset management goals (including all aspects of change management). The plan should outline a schedule with roles, responsibilities, accountabilities, tasks, and dependencies. The implementation process should addresses dependencies, including reliance on the hiring of new staff, funding availability, or software development. The process also should reconcile asset management priorities against other agency initiatives. Implementing activities should be established based on an assessment of how well they are expected to accomplish the goal of achieving or maintaining a state of good repair of the provider's assets. To the extent possible, the implementation strategy should address specific problems or deficiencies that improve performance.

FINAL RULE:

FTA is not making any revision to this section in the final rule related to these comments.

COMMENTS: TAM Plan—Description of Annual Key Transit Asset Management Activities

Some public comments addressed the seventh proposed TAM plan element (§ 625.25(b)(7)), which was described in the NPRM as a list of the key activities or actions that are critically important to achieving the transit provider's asset management goals for the year. A transit operator asked if the "key activities" are intended to focus on discrete projects and actions or if it meant to document ongoing, routine asset management practices for each asset class (*i.e.,* describing asset life-cycle procedures from specification and procurement, through to disposition). If the latter, the commenter asked how it should determine which asset classes warrant specific levels of detail documentation, and how much additional cost and staff effort would be required to prepare such a TAM plan.

A transit operator requested that, if FTA is proposing to require a list of annual activities in a TAM plan, then FTA should provide an easy way to update the previous year's submission because anticipated annual changes would be minor. Another transit operator asked, in the case of an agency that already has a TAM plan, if this TAM plan element would be a list of next steps for continual improvement.

FTA'S RESPONSES: TAM Plan—Description of Annual Key Transit Asset Management Activities

In the NPRM FTA proposed that a TAM plan include a description of a transit provider's key asset management activities that it plans to accomplish in the upcoming year. This final rule does not prescribe what the description must include or how a transit provider must develop it. However, examples of activities include "combine three departments' asset inventories", "develop a lifecycle management template and populate it with information from three most-critical asset classes," or "hire an asset management program manager." A description of activities also could include a list of next steps for continual improvement.

FINAL RULE:

FTA is not making revisions to this section in the final rule related to these comments.

COMMENTS: TAM Plan—Specification of Resources Needed To Develop and Implement the TAM Plan

Some public comments addressed the eighth proposed TAM plan element (§ 625.25(b)(8)), which was described in the NPRM as an identification of the financial resources that a transit provider estimates are necessary for implementing its TAM plan and achieving its asset management goals. A transit operator asked FTA to clarify if this TAM plan element should include an analysis of resources required to perform maintenance activities in addition to capital investment work or whether it is only intended to capture the costs associated with TAM plan preparation. Another transit operator stated that this additional TAM plan requirement for tier I providers as well as the one in proposed § 625.25(b)(9) would create a reporting burden that may divert time and resources from improving asset condition and system safety.

FTA'S RESPONSES: TAM Plan—Specification of Resources Needed To Develop and Implement the TAM Plan

The NPRM proposed that a transit provider identify the resource needs to develop and implement a TAM plan, including those resources that a transit provider reasonably anticipates would be available over the TAM plan horizon period. In order to set achievable SGR goals and in order to do a meaningful investment prioritization, a transit provider needs to know what resources it anticipates needing and what is available. The resources could include financial, human, equipment, and software. FTA has not required a specific methodology or format in the final rule.

FINAL RULE:

FTA is not making any revisions to the final rule related to these comments.

COMMENTS: TAM Plan—Monitoring TAM Plan and Related Business Practices

A few public comments addressed the ninth proposed TAM plan element (§ 625.25(b)(9)), which was described in the NPRM as a continuous improvement plan that sets timelines and milestones to track the transit provider's progress towards meeting its asset management goal. A transit operator recommended that if FTA is planning to adopt an oversight schedule to evaluate grantees' TAM plans then it should be integrated into existing FTA oversight functions instead of being a stand-alone requirement. Another transit operator said the requirement for a monitoring and evaluation plan should be better differentiated from other TAM plan components. An individual commenter asked for guidance and instruction on the continuous improvement process.

FTA'S RESPONSE: TAM Plan—Monitoring TAM Plan and Related Business Practices

FTA intends to incorporate compliance with requirements of the final rule into its existing oversight activities. FTA will issue guidance to aid transit providers in their implementation of the final rule.

FINAL RULE:

FTA is not making any revisions to this section in the final rule related to these comments.

COMMENT: TAM Plan—Tier II Providers Exempt for TAM Elements

A business association expressed appreciation for FTA's efforts to create a tiered approach for the proposed National TAM System that acknowledges the diversity of transit systems.

Some public commenters provided other comments on FTA's proposed approach to transit asset management. For example, a transit operator asserted that the proposed rule has not provided the necessary flexibility to facilitate the effective participation of small transit operators. A professional association urged FTA to recognize the inherent differences in the size of agencies by ensuring that any new regulations allow flexibility for small operators to more easily comply and by establishing minimal universal requirements that can be applied across all agencies to allow for greater flexibility and a scaled approach for implementation. Voicing similar concerns, a transit operator recommended that FTA finalize the rule by implementing TAM principles without overly burdening States, small providers, and 49 U.S.C. 5310 subrecipients.

Some public comments addressed the proposed special provision for tier II providers that would allow them to include only the first four proposed TAM plan elements in their TAM plans (§ 625.25(c)).

Several State DOTs and other commenters expressed support for the reduced requirements for small operators. Three State DOTs said Section 5310 subrecipients should be excluded from this rule. One of the State DOTs and another commenter recommended that, at a minimum, Section 5310 subrecipients should be limited to only including the TAM plan elements at proposed § 625.25(b)(1) and (2). Similarly, a transit operator recommended further scaling back the requirements for small operators.

A tribal government appreciated the reduced TAM plan requirements for tier II providers but asserted that it is not enough of a burden reduction given FTA's expectations for the analytical processes, decision support tools, investment needs, and prioritization strategies for tier II providers. However, one State DOT said the non-statutory criteria should extend to tier II providers who are transporting the public.

A transit operator supported inclusion of the non-statutory TAM plan requirements in proposed § 625.25(b)(5) through (9) because they align with ISO 55000 and international best practices for asset management. However, the commenter said FTA must understand that grantees will have to dedicate significant resources to developing TAM plans that exceed the statutory requirement. In contrast, a private transit operator asserted that because the TAM plan requirements in proposed § 625.25(b)(5) through (9) are not included in MAP–21, those elements should not be a requirement of the final rule.

FTA'S RESPONSE: TAM Plan—Tier II Providers Exempt for TAM Elements

The National TAM System is a scalable and flexible framework that establishes terms and concepts and allows for consistency and standardization of formats, without being prescriptive on methods or application. FTA understands that smaller, rural, or less sophisticated transit providers may not have the expertise or resources to develop and implement a nine element TAM plan. FTA believes that this final rule imposes the least burdensome reporting requirements while still meeting the requirements in the law by allowing tier II providers the option to develop and implement a four element TAM plan and participate in a group TAM plan developed by a sponsor. The sponsor would be responsible for reporting required information to FTA on behalf of all group TAM plan participants, thereby reducing the burden on those small providers.

FTA believes that the mechanics of the development for a group TAM plan is a local decision. Although sponsors are primarily responsible for the development of the group TAM plan, participants should collaborate or contribute to the development of the group TAM plan, to the extent practicable.

FINAL RULE:

In the final rule FTA revises the definition of tier II provider to include explicitly American Indian tribes.

COMMENTS: TAM Plan—Additional Comments

Some commenters provided other comments on the proposed TAM plan requirements that were not otherwise addressed above.

Two trade associations and a transit operator urged FTA to provide as much flexibility in compliance as possible so that agencies can make use of their existing processes and documents—including TAM plans required by the State—without too much additional burden. Similarly, a transit operator said attempting to define how each TAM plan should look and how each agency will perform asset management by means of strict regulation and use of required methodology limits all agencies from creating a plan that would add value to their existing processes while meeting the needs of the legislation. An MPO and two transit operators requested that the final rule clarify, that if other documents contain all of the required elements, such as Short Range Transit Plans (SRTPs), such documents may be used to satisfy the requirement for a TAM plan.

Two transit operators recommended that FTA eliminate a separate requirement to prepare fleet management plans, stating that separate asset management and fleet management reporting requirements will create redundancy and unnecessarily burden grantees.

Some commenters provided suggestions for additional elements to include in the TAM plan, including a description of QA/QC methods, organizational charts, and a list of asset management personnel. A trade association recommended that the grantees' TAM plan and project prioritization be made public.

Expressing concern about the limited resources of tier II systems, a trade association urged FTA to not require—either stipulated or a functional byproduct of the rulemaking—that small urban, rural, or tribal providers hire additional staff to oversee compliance with new regulations. A transit operator recommended that FTA revise its SGR formula program language so that "transit asset management practices inform the capital investment planning and programming processes by producing data that informs the investment prioritization."

FTA'S RESPONSE: TAM Plan—Additional Comments

When possible, FTA has remained silent on methodologies transit providers must use and has recognized that a strict national system would not be useful or effective. FTA does not want to create redundancy with effective practices and has established a framework and standard terminology the industry can follow to compare their TAM and SGR nationally.

A transit provider may use any source available to it, including existing asset inventories, to develop a TAM plan required under the final rule. The fleet management plan required at the grant making stage of a project may differ from the TAM plan asset inventory as the TAM plan has a four year horizon, while the grant application primarily reflects current acquisitions.

FTA encourages and supports the use of additional TAM plan elements such as QA/QC methods, organizational charts, etc. but does not require them in the final rule.

FTA will not collect or approve TAM plans. A transit provider will certify compliance with the final rule through FTA's certification and assurances process. The role of the sponsor of a group TAM plan is to certify on behalf of their participants. In addition, the sponsor will accept certification from their subrecipients that opt-out of a group TAM plan.

FTA has addressed the comments related to the role of SSO previously in the Implementation and Oversight section.

FTA has attempted to minimize the compliance burden on small operators and has also provided an option which shifts the administrative and oversight burden from the small operator to the sponsor. However, the individual transit provider is the only entity capable of implementing TAM at its agency.

Unless protected under State law, a TAM plan would be available to the public.

FINAL RULE:

FTA is not making any revisions to this section in the final rule related to these comments.

625.27 Group Plans for Transit Asset Management

The NPRM proposed that all recipients and subrecipients of Chapter 53 financial assistance must develop a TAM plan. This requirement is met either through an individual TAM plan or through a group TAM plan. The statute includes other requirements for the National TAM System, which were proposed in the NPRM, and tied to the sponsorship of the TAM plan. Sponsoring a group TAM plan does not make the sponsor a transit provider; a sponsor must own, operate or manage capital assets in transit service to be a transit provider.

This section proposed that any recipient of FTA funds with subrecipients must sponsor a group TAM plan for their tier II provider subrecipients that are not also recipients of 5307. Thus, all subrecipients under the 49 U.S.C. 5311 rural area formula program that are not also direct recipients of 49 U.S.C. 5307 urbanized area formula grants, regardless of size, must have the opportunity to participate in a group TAM plan. Sponsors would not be permitted to reject requests from a tier II provider to participate in a group TAM plan and must develop a group TAM plan for all eligible tier II providers. However, a group TAM plan participant may choose to opt-out of a group TAM plan by notifying the group TAM plan sponsor of its intent and by creating its own TAM plan. In addition, an eligible participant that is a subrecipient to more than one sponsor may select which group TAM plan it would like to participate in. For example, a rural area formula program subrecipient that operates in multiple states may be eligible to participate in more than one group TAM plan. The subrecipient would need to select which group TAM plan it wanted to participate in, and formally opt out of the plan that it chose not to participate in. In the absence of explicit notification from a tier II provider of its intent to opt-out, the sponsor must include that provider in the group TAM plan. A State or direct recipient that is also transit provider may only participate in a group TAM plan as the sponsor. Such a State or direct recipient may not include itself in the group plan it is sponsoring for its subrecipients; it is required to develop a separate, individual TAM plan for its own transit system.

Each transit provider's Accountable Executive is required to coordinate, to the extent practicable, with a group TAM plan sponsor in the development of the group TAM plan. Accordingly, a group TAM plan sponsor is required to coordinate the development of the plan with each of the plan participants' Accountable Executive. Notably, the transit provider retains responsibility for implementing the group TAM plan at their agency.

COMMENT: Group Plans—Responsibilities for States, Tribes, and Direct Recipients

Numerous public comments addressed the option for tier II providers to participate in a group TAM plan (proposed § 625.27(a)(2)) and the related responsibilities for States, tribes, and direct recipients relating to group TAM plans (proposed § 625.27(a)(1) through (3)). Two State DOTs opposed a mandate on the State to develop a group TAM plan for all of its tier II providers. One State DOT suggested that States should not be required to prepare a TAM plan for their tier I or tier II subrecipients. One State DOT requested that DOTs be allowed to prepare a group TAM plan that includes all transit operators in the State (tier I and tier II). A transit operator stated that sponsorship of a group TAM plan should be a voluntary choice and that the sponsor should serve in a coordinating and collaborative role. The commenter stated that any costs incurred by the group TAM plan sponsor should either be allowed to be passed through to the participating subrecipients or else should be eligible for reimbursement by FTA.

Several State DOTs and other commenters recommended that State DOTs be mandated only to do a group TAM plan for its subrecipients under the 49 U.S.C. 5310 and Section 5311 programs as these subrecipients are already subject to State oversight and their Federal funds are already programmed by the State across the entire group. One of these State DOTs and other commenters suggested that separate group TAM plans should be allowed for subrecipients under the 49 U.S.C. 5310 and 5311 programs.

A State DOT urged FTA to establish a smaller fleet size threshold for urban systems to qualify for inclusion in a State plan, which the commenter said would recognize the urban/rural distinctions that already exist. Alternatively, this commenter would endorse limiting mandatory State plan participation for subrecipients under 49 U.S.C. 5310 and 5311. Two State DOTs suggested that 49 U.S.C. 5310 subrecipients with less than 10 vehicles should be excluded from the group TAM plan requirements. To decrease the burden further, these commenters recommended that FTA require reporting only on FTA-funded assets for 49 U.S.C. 5310 subrecipients.

A State public transportation system also suggested that group TAM plans should be limited to only FTA-funded assets used in the provision of public transportation services, reasoning that it would be an inappropriate burden to apply the TAM regulations to all of subrecipients' assets that directly or indirectly support its transportation service. This commenter also urged FTA to eliminate the TAM plan requirements for subrecipients that only receive 49 U.S.C. 5310 funds, reasoning that a majority of such subrecipients in the State have fewer than five vehicles, which are used to provide transportation to only program participants with specific needs, rather than for public transportation services.

Some State DOTs and a professional association said that for subrecipients other than those that are solely subrecipients under 49 U.S.C. 5310 or 5311, it should be a mutual decision between a group TAM plan sponsor and the eligible providers in the group if a group TAM plan will be done. One of the State DOTs and the professional association stated that after the mutual decision to produce a group plan is made, it should be the sponsor, not the individual providers, who determine if an individual provider may opt out. A State DOT requested that rather than requiring State DOTs to develop a group plan unless participants opt out, the FTA TAM rule should allow operators to develop their own plans with State DOTs developing a group TAM plan for remaining participants.

A few State DOTs and a professional association said that by mandating the State DOT to prepare a group plan for small urban providers (*e.g.,* subrecipients under 49 U.S.C. 5307 and Section 5339), FTA would significantly increase the role of the State DOT in planning and subsequent oversight of this group of providers. These commenters opposed the transferring of additional responsibilities for small urban providers from FTA to the States. A professional association requested additional funding for State DOTs to be able to prepare the group TAM plans.

A transit operator said it is the direct recipient of 49 U.S.C. 5307 funds, and that it also has one subrecipient of its 49 U.S.C. 5307 funds. This commenter stated that its subrecipient is also a subrecipient of 49 U.S.C. 5310 and Section 5311 funding from the State, and asked if it would be required to complete a Group TAM plan. A transit operator expressed concern that while it will need to complete an individual TAM plan because of its Tier I status, as a 49 U.S.C. Section 5311 subrecipient it will also be obliged to participate in a State group TAM plan. The commenter said this will result in an additional cost that may not have been captured in the cost analysis performed by FTA.

A transit operator asked if tier I agencies that have subrecipients will be able to combine their agency plan with those of their subrecipients. A State DOT and a professional association suggested that States that are both transit operators and sponsors of group TAM plans should only be required to prepare a single TAM plan inclusive of the statewide system, which may include all the assets of direct recipients, subrecipients, and transit providers if that makes sense for their State. Some State DOTs and a professional association requested clarity on the State's roles and responsibilities in resolving conflicts that may arise between TAM plan sponsors and a subrecipient.

A State DOT requested an example of a non-State group TAM plan sponsor and clarification as to whether an MPO could be a group TAM plan sponsor. This commenter requested an example of when the MPO would have the responsibility for integrating group TAM plans and when it is a State responsibility. An MPO requested that FTA add explicit clarifying language to the final rule stating that an MPO that merely receives funds from FTA and passes the funds along to transit operators would not be required to develop and carry out a TAM plan or a group TAM plan, consistent with the analysis of §§ 625.5 and 625.27 in the NPRM. Another MPO requested that FTA clarify the level of responsibility of a group TAM plan sponsor by setting a minimum expectation that requires the sponsor to focus on coordination and collaboration while preserving local decision-making.

A professional association supported the ability of American Indian tribes to develop their own TAM plans, even when they are (tier II) subrecipients of the State under the 49 U.S.C. 5311 program. This commenter also recommended that the rule should clarify that it is a mutual decision between the tribe and the group TAM plan sponsor if a tribe will be include in a group TAM plan and should clearly state that, if a tribe opts to be part of a group TAM plan, the tribe must to agree to setting targets and prioritizing investment across the entire group, which could result in the State DOT being involved in programming Federal funds available to the tribe both as a subrecipient and direct recipient.

A State transit association recommended that FTA should eliminate the lead agency model and not implement a requirement that "designated recipients [must] review TAM plans for subrecipients." The commenter asserted that many transit agencies the DOT has approached to be lead agency have refused based on unwarranted liability, lack of staffing to monitor sub-grantees, and lack of additional administrative funding to cover oversight.

FTA'S RESPONSE: Group Plans—Responsibilities for States, Tribes, and Direct Recipients

FTA has established a two-tier approach to TAM plan development to reduce the burden on smaller transit providers. The NPRM proposal was consistent with other FTA programs whereby a State, direct or designated recipient oversees subrecipients and certifies to FTA on their behalf. The costs associated with developing a group TAM plan are eligible under many grant programs (*e.g.,* Urban area formula program, rural area formula program, state of good repair formula), and the Sponsor is in a better position to determine the future funding for investment prioritization.

The feasibility of the group TAM plan assumes that the funding relationship between recipients and subrecipients naturally lends itself to this type of arrangement because the process of prioritizing investments is already occurring at the sponsor level. As a result, it is logical to require States and direct recipients (or designated recipients of 49 U.S.C. 5310 funds) to take a leadership role in developing group TAM plans for their subrecipients. However, if this relationship is not appropriate for a particular tier II provider, then that tier II provider can opt out of the group TAM plan and develop its own TAM plan.

The sponsor may determine that multiple group TAM plans are necessary for their subrecipients. For example, a State DOT may decide to establish separate group TAM plans for its 49 U.S.C. 5310 and 5311 subrecipients. Or a State DOT may decide to establish a single group plan for all of its subrecipients. The final rule provides flexibility to sponsors to decide the number of group plans that it should develop.

FTA agrees that the group TAM plan should include those subrecipients already subject to the sponsor's oversight and does not intend to create new relationship of oversight not already in practice. Thus, FTA has revised the final rule to clarify that sponsors are not required to offer a group TAM plan to those subrecipients that are also direct recipients of 49 U.S.C. 5307 funds. However, any direct recipient of 49 U.S.C. 5307 funds that is a tier II provider remains eligible to participate in a group plan by mutual agreement of the sponsor and the transit provider. For example, a tier II transit provider that is a direct recipient of 49 U.S.C. 5307 funds, and is a subrecipient of 49 U.S.C. 5311 funds from the State may participate in the State's group plan by mutual agreement, but the State is not required to include this subrecipient in a group TAM plan.

FTA recognizes that subrecipients with very small fleets of less than ten vehicles have unique circumstances, and FTA has sought to minimize the burden on these providers as much as possible.

As noted earlier, the intention of the asset inventory is to provide a strategic perspective capital assets used in the provision of public transit. As such all assets, regardless of funding source, are parts of the landscape and subject to these provisions.

FTA wishes to clarify that there are three types of TAM plans (1) a nine element individual tier I plan, (2) a four element individual tier II plan, and (3) a four element group TAM plan. A transit provider that is a recipient under one program and subrecipient under another is not required to do two TAM plans, but must determine which is most appropriate.

The role of a sponsor in the development of the TAM plan is that of the leader—the sponsor determines the asset inventory level of detail, the condition assessment methodology, and the criteria and weighting for investment priorities as well as which tools to use to support these efforts. As the leader, the sponsor is responsible to the extent practicable, for coordination and collaboration with all participants, while preserving local decision making. The participant is an active partner in the development of the TAM plan providing information necessary to conduct the analyses and providing feedback to the sponsor. The tier II participant maintains the autonomy to opt-out of a group plan if it is not effective.

An example of a non-State sponsor is an MPO or transit provider who may be the designated recipient of 49 U.S.C. 5310 funds for their urbanized area and distributes those funds to subrecipients. Another example would be an MPO or transit provider that distributes some of the 49 U.S.C. 5307 funds for their urbanized area to subrecipients.

FTA agrees that Native America tribes preserve the autonomy to develop their own TAM plan even if they are tier II provider subrecipients of the State. A tribe also may choose to participate in a group TAM plan sponsored by the State. Each participant must provide the sponsor with information necessary for the development of the group TAM plan.

FTA disagrees that it should eliminate the lead agency model. The lead agency model reduces the burden on smaller providers, which FTA believes justifies the additional coordination burden placed on the sponsor. The lead agency approach seeks to use existing oversight relationships to reduce additional oversight burden to the sponsor.

FINAL RULE:

FTA has made revisions to the final rule to clarify eligibility for participation in a group TAM plan and the responsibilities of a sponsor.

COMMENTS: Group Plan—Opting Out of Group TAM Plan

Some public comments addressed the proposed option for a tier II provider subrecipient to "opt-out" of a group TAM plan and create its own TAM plan at proposed § 625.27(a)(4). An MPO requested clarification on the requirements for a State to develop a group TAM plan for all tier II recipients and the ability of a participating accountable executive to opt-out of the State plan. A professional association expressed support for the provision that tier II agencies can elect to complete their own TAM plan.

FTA'S RESPONSES: Group Plan—Opting Out of Group TAM Plan

The NPRM proposed that all sponsors develop a group TAM plan for their tier II provider subrecipients. A tier II provider's accountable executive may choose to opt-out of a group TAM plan for a number of reasons, including if the provider will develop its own individual TAM plan.

FINAL RULE:

FTA is not making any substantive revisions in the final rule related to these comments.

COMMENTS: Group Plan—Plan Requirements

Several commenters provided input on the group plan requirements proposed in § 625.27(b). A State DOT said the group TAM plan requirements seem reasonable.

Several commenters requested clarification on investment prioritization under group plans. Several State DOTs and other commenters said that the sponsor of a group TAM plan should establish targets and investment prioritization for all members of the group, as a whole. An MPO said FTA should clarify that the group investment prioritization should be based on the priorities of the individual tier II providers rather than those of the agency responsible for the development of the group TAM plan. A State DOT said language should be included to specify that policy guidelines by group TAM plan sponsors can guide asset investment prioritization at a high level. A State DOT said investment priorities for group TAM plans should only be advisory since they are set across the entire group.

An individual commenter asked if all assets in a group TAM plan must be prioritized as if it were one transit agency, and if so, how this would affect grant decision-making.

One commenter questioned whether it would then be advantageous or disadvantageous for a small operator to opt-out of the group plan and create its own plan in order to compete separately for State grant funding.

A State DOT said it is unclear whether the proposed rule would require group TAM plan sponsors to develop ULBs for all providers regardless of the providers' unique operating environments.

A transit operator asked for guidance on asset planning, management, and inventory in a group TAM plan where a transit agency operates and maintains assets owned by another transit agency.

FTA'S RESPONSES: Group Plan—Plan Requirements

In the NPRM, FTA proposed that sponsors develop unified targets for group TAM plans. This means that a sponsor would develop performance targets for each asset class in the group plan, for the entire group. While some participants may not have assets in every asset class included in the group plan, they are responsible for the programs and projects identified in the group plan investment prioritization that relate to their asset inventory. For example, a group plan participant that has ten cutaway vans, but no buses would have its assets included in the cutaway van mode SGR target, but the group plan may also include a target for buses. This participant is only responsible for implementing the TAM plan as it relates to their vans. They would not however, be involved in the attainment of the bus target.

FTA agrees that a sponsor should establish the investment prioritization based on the priorities of the whole group, to the extent practicable. The methodology and practice for developing the group TAM plan are a local decision. FTA will provide guidance and technical assistance for sponsors and participants to assist in developing TAM group plans.

A benefit of participating in a group TAM plan is the reduced administrative burden. A potential drawback is the lack of individuality in the TAM plan, as the TAM group plan is developed as if the group were one transit operator, pooling asset inventories and ultimately developing unified targets across the group as a whole.

FTA clarifies that a ULB is not transit operator specific, but may be specific to a particular number of vehicles within the asset inventory. Group TAM plan sponsors will be able to specify different ULBs for different participants, or even for different fleets operated by a single group plan participant.

FTA disagrees with the commenter that asserts the two tiered approach would lead to tier I Accountable Executives being responsible for tier II providers. The group TAM plan approach uses existing relationships between recipients. A tier II provider always reserves the option to opt-out of a group plan. A group TAM plan sponsor that is also a tier I provider must develop its own separate individual TAM plan.

FINAL RULE:

FTA is not making any revisions to the final rule related to these comments.

COMMENTS: Group Plan—Role of the Accountable Executive in Development of Group TAM Plans

Several public comments addressed the role of the Accountable Executive in the development of group TAM plans as proposed in § 625.27(c)(2) and (3).

Several commenters, including transit operators and professional associations, requested clarification on whether the Accountable Executive responsibilities remain with each tier II agency or whether the responsibility "rolls up" to the group TAM plan sponsor's Accountable Executive, with most generally expressing that each participating transit agency should have its own Accountable Executive. Some commenters requested FTA to clarity that tier II reporting agencies are not required to cede the role of Accountable Executive (or management of their agency) to their respective States or other direct recipients. A State DOT stated that, if States are required to include tier II 49 U.S.C. 5307 recipients, then it does not wish to assume the responsibility of the group's Accountable Executive. Another commenter asserted that the group TAM plan sponsor's designated Accountable Executive, if necessary under the rule, would have limited authority in making progress towards the targets. If the responsibility "rolls up" to the group TAM plan sponsor's Accountable Executive, a transit operator asked if such responsibility would provide the commenter with the authority to establish the capital program priorities for each of the tier II subrecipients.

Some State DOTs and a professional association recommended that FTA clarify that just because the State DOT (as a group TAM plan sponsor) coordinates a group TAM plan, it does not mean that the State is responsible for implementation of the group TAM plan. Additionally, these commenters suggested that the State should not be considered a transit provider and not be required to have an Accountable Executive solely as a result of sponsoring a group TAM plan.

A transit operator asserted that since tier I providers do not control the funding of the tier II providers, tier I should not be dictating how tier II providers manage their assets. This commenter said that this would force greater centralization of decision-making and tier I would need to have control over tier II funding decisions. Thus, according to this commenter, the Accountable Executive would end up being responsible for both the primary agency and the roll-up agencies managing their assets.

FTA'S RESPONSES: Group Plan—Role of the Accountable Executive in Development of Group TAM Plans

In this final rule, FTA clarifies that a sponsor for a group TAM plan is not the Accountable Executive for each participating transit provider. By participating in a group TAM plan, an Accountable Executive may be required to defer to the decisions of the sponsor regarding prioritization of investments. However, each Accountable Executive is ultimately responsible for implementing a TAM plan. The Accountable Executive responsibilities do not "roll-up" to the sponsor.

FINAL RULE:

FTA is not making any revisions to the final rule related to these comments.

COMMENT: Group Plan—Providing Sponsors With Necessary Information (Role of Sponsor and Participant)

A few public comment submissions addressed the proposed requirement that group TAM plan participants must provide group TAM plan sponsors with all relevant and necessary information for the development of the group TAM plan as proposed in § 625.27(c)(4). An MPO suggested that the rule clarify the consequences of a group TAM plan participant not providing the required information, and provide the group TAM plan sponsor with a remedy or methodology to proceed without the missing information.

FTA'S RESPONSES: Group Plan—Providing Sponsors With Necessary Information (Role of Sponsor and Participant)

The ultimate responsibility for development of a group TAM plan lies with the sponsor. However, participants should collaborate with sponsors and contribute to the development of the group TAM plan, to the extent practicable. FTA believes that the mechanics of the development for a group TAM plan are a local decision.

FINAL RULE:

FTA is not making any revisions to the final rule related to these comments.

COMMENTS: Group Plan—Other Comments

Some commenters provided other comments on group TAM plans. For example, a transit operator asked how

SGR measures for several different agencies within a region can be rolled up if each service provider can define its own approach to quantify SGR. This commenter also asked what the role of a regional oversight board would be in the TAM effort if it oversees providers that would develop individual TAM plans due to the tier I level designation. An individual commenter stated that the group TAM plan provider cannot guarantee that they will be able to meet the plan's SGR goals because they cannot allocate the local funding that is required for capital grants.

A trade association requested additional guidance on group TAM plans, including ongoing participation of grantees and subrecipients, in order to ensure consistency.

Several State DOTs and other commenters urged FTA to clarify that a group TAM plan is not to be a collection of individual subrecipient plans into a single document; rather, it should provide group-level information. A State DOT requested that the group TAM plan approach provide increased flexibility.

An MPO requested clarification on the relationship between the Coordinated Plan and the group TAM plan process requesting confirmation that the TAM plan investment prioritization does not supplant the Coordinated Plan.

A State DOT requested guidance on the approval or certification process of a TAM plan. The commenter suggested that group TAM plans should be approved by the plan's sponsor, in coordination with each member of the group. However, the commenter said that formal approval by each Accountable Executive who is in a group TAM plan should not be mandated because the Accountable Executive for an individual member may not be fully supportive of the investment priorities made for the group as a whole.

FTA'S RESPONSES: Group Plan—Other Comments

This final rule establishes the SGR performance measures in § 625.43. Each provider or sponsor must set performance targets based on the measures.

Each transit provider can make its own SGR determinations taking into consideration the three objective standards.

FTA agrees that a sponsor cannot guarantee results of their TAM plan because the responsibility for implementing the TAM plan resides with each transit provider. However, each participant should support the group's investment priorities. There are no financial rewards or penalties associated with target attainment.

The group TAM plan is most effective if the group remains consistent over time. However, the tier II participants maintain the option to opt-out of the group TAM plan and create their own. In addition, a group TAM plan approach will be most effective where the required activities and analyses are conducted in consideration of the group as a whole, as opposed to a compilation of individual analyses, in order to develop unified targets. Nevertheless, the mechanics of the group TAM plan are a local decision. Additionally, FTA agrees that the group TAM plan process does not supplant existing decision making practices, such as the Coordinated Plan for Human Service Transportation.

FTA will not routinely collect or approve TAM plans. Each transit provider or sponsor will certify compliance with the final rule through FTAs certification and assurances process.

FINAL RULE:

FTA is not making any revisions to the final rule related to these comments.

625.29 Transit Asset Management Plan: Horizon Period, Amendments and Updates

This section proposed timeframes for developing and updating a TAM plan. A TAM plan is required to be forward looking, and is required to forecast projects, targets, and activities for at least four fiscal years. Some transit providers may desire a longer analysis period, however, the analysis period must be at least four years. Ideally, the TAM plan cycle should coincide, to the extent practicable, with the State and metropolitan planning cycle for development of the STIP and the TIP.

This section also provided that a TAM plan should be updated in its entirety at least every four years, and again, this should ideally, coincide, to the extent practicable with the update cycle for the STIP and the TIP. The requirement to update the TAM plan means that a transit provider must revisit every element of its TAM plan and make any necessary changes for a subsequent version, at least once every four years. Additionally, during the course of the horizon period, a transit provider may choose to amend its TAM plan to reflect changes to investment priorities, targets, or other unforeseen occurrences (like a natural disaster) that impact the relevance of the TAM plan.

FTA recommends that transit providers should consider current and future climate and weather-related hazards as part of their prioritization of investments. For example, the frequency and severity of potential hazards such as heavy rainfalls, coastal and riverine flooding, heat waves, extreme cold, and wind events may directly impact assets located in vulnerable areas. These potential hazards affect how a provider identifies and prioritizes necessary hazard mitigations, asset-replacement schedules, or the expected useful service duration of capital assets. A transit provider should have knowledge of the vulnerability of its system to natural hazards and prioritize protecting their assets from those hazards and improve the resilience of the system; however, FTA is not requiring a formal climate resiliency analysis as part of this rule.

COMMMENTS: Horizon Period

Several commenters suggested that the TAM plans allow agencies to better align other plans, such as their capital plan. Accordingly, a few of these commenters suggested that the plan should be valid for four to eight years. Another commenter suggested that the TAM plan and targets should be valid for five years.

A business association expressed support for proposed section 625.29 because it would align TAM plans on a cycle that coincides with TIP and STIP development. In contrast, one transit operator commented that the metropolitan planning process (LRTPs, STIPs, and TIPs) is every five years and the FTA triennial review process is every three years, and asked why the TAM plan does not match one of these timeframes.

A State transit association supported the peer recommendation that investment prioritization time periods should reflect a provider's short-term capital plans and be closely coordinated with TIP and STIP processes. However, this commenter recommended that FTA provide some guidance to DOT staff responsible for procurement regarding purchasing timelines, explaining that from the time an agency receives an award confirmation letter from the DOT, it typically takes up to 3 years to receive the vehicle.

A transit operator asked in which instances, if any, would FTA allow investment prioritization to exceed the four-year target. If none, this commenter asked if FTA would provide a method in which agencies could request an extension of time to set forth the "sufficient investment" that must be directed to projects that pose safety risks. Another transit operator said that the rule is unclear about how to reflect evolving priorities from year-to-year in a TAM plan that requires project planning and prioritization to occur for a four year period.

FTA'S RESPONSE: Horizon Period

FTA established the horizon period for TAM plans of four years to align with the Federal metropolitan and statewide planning processes. FTA recognizes that priorities and funding may shift over a four year horizon and has provided the option to update or amend the TAM plan during the horizon period.

FINAL RULE:

FTA is not making any revisions to the final rule related to these comments.

COMMENTS: Amendments and Updates

Some transit operators and an MPO stated that developing a fixed 4-year investment plan would be in conflict with their shorter capital budget cycles. These commenters suggested that the updates to the capital budgets should not require updates to the TAM plan. Also, two of the commenters suggested that agencies should be enabled to deviate from the project list in the TAM plan without alerting FTA in order to respond appropriately to changes in risk, financial conditions, service levels, or other considerations of asset management.

A transit operator recommended that FTA allow agencies to update projects included in the TAM plan annually, reasoning that it may be difficult for agencies to forecast all projects to be included in the 4-year timeframe, particularly in the early stages of implementing the TAM System.

Two commenters recommended that the final rule state that annual target setting should adjust the prior year's targets only if significant asset changes occurred. Another commenter asserted that requiring updates each time the prioritization of projects changes equates to a yearly update, which is unnecessarily burdensome. This commenter suggested that updates should only be required concurrent with production of the STIP or TIP as written by the governing MPO. A transit operator asked FTA to clarify how it would define a "significant change" that would warrant an annual update to the TAM plan.

FTA'S RESPONSE: Amendments and Updates

FTA agrees that an update to a transit providers' capital budget does not by itself require a TAM plan update. However, depending on the magnitude of funding differential initially expected, a transit provider may determine an amendment or update is necessary to align the TAM approach with the current funding conditions. The investment prioritization and program of projects are a strategic projection for the four year horizon period. Using the best data and analysis available, the transit provider should be able to determine the priorities of investments. However, if deviations occur due to change in condition, risk, or other considerations, a transit provider may update or amend its TAM plan to reflect those deviations.

The difference between a TAM plan update and a TAM plan amendment is the degree of the unexpected change. For example, a transit provider may update its TAM plan if it receives discretionary program funds that it did not anticipate receiving when it developed its investment prioritization.

FINAL RULE:

FTA is not making any revisions to the final rule related to these comments.

COMMENTS: TAM Plan Process

A professional association and three State DOTs said that FTA should clarify in the final rule how individual and group plans will be approved.

A transit operator commented that the NPRM is unclear on how transit agencies will report TAM plans and updates to those plans. This commenter also asked to what extent reviewers during the FTA triennial review process will be empowered to reject performance targets in TAM plans.

A transit operator said FTA should delay finalization of the present rulemaking to coincide with promulgation of final safety performance criteria for all modes of public transportation; and minimum safety performance standards for vehicles in revenue operations, as prescribed by 49 U.S.C. 5329(b)(2)(A) and (C).

FTA'S RESPONSE: TAM Plan Process

FTA will not routinely collect or approve all TAM plans. Individual plans will be certified by a transit provider and group TAM plans will be certified by a sponsor as part of the other certifications and assurances that must be provided to FTA as part of any grant. The development and implementation of a TAM plan should not be merely an exercise to comply with the requirements of the final rule. The TAM plan is supposed to be a tool that a transit provider can use to assess the condition of its assets and make decisions on how to best prioritize funding for those assets in order to achieve and maintain a state of good repair. FTA intends to verify compliance with todays' final rule through its existing oversight activities. Performance targets are a local decision, and are neither approved nor rejected by FTA.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

625.31 Implementation Deadline

This section proposed that all TAM plan development should be completed no more than two years after the effective date of the final rule. If the rule becomes effective at any time after the first day of the transit provider's or sponsor's fiscal year, the initial TAM plan should cover the remaining portion of that year plus a four-year time horizon. FTA will allow transit providers to extend the TAM plan implementation deadline by submitting a written request. A written request would need to include documentation which shows that the transit provider has made a good faith effort to meet the deadline, an explanation of why the transit provider could not meet the deadline, and a proposed new deadline, subject to FTA approval. FTA reserves the right to deny a request to extend the deadline.

COMMENT: 625.31 Implementation Deadline

Some public comments addressed the proposed implementation deadline in § 625.31. Several State DOTs supported FTA's recognition that the requirement to develop a TAM plan must have a delayed effective date. A State DOT and a transit operator expressed support for the two-year implementation period to develop a TAM plan. Another transit operator expressed support for the proposal to allow transit providers extra time to develop a TAM plan with a written request.

Several commenters recommended that FTA phase-in implementation of the TAM plan requirements. Four State DOTs and other commenters recommended that (1) the initial TAM plan (due after two years) only be required to include revenue vehicles, (2) within one year of TERM training in the State, facilities should be included in the plan and (3) all other assets should be included within four years from the final rule date. However, some of these commenters suggested that the third and final phase should only require FTA-funded assets and should occur four years after the initial TAM plan, versus four years from the final rule date. Similarly, a transit operator said two years may be sufficient for some categories of assets (*i.e.*, rolling stock), but asked that FTA consider phasing in categories where guidance is not currently available, such as facilities. A professional association and a State DOT recommended that facilities be exempted from target setting and from inclusion in a TAM plan until training is provided (preferably State-by-State) on the use of the TERM for the State DOT and its subrecipients. One State DOT explained that it will need a significant amount of time to complete physical inspections on all its facilities.

A business association and an MPO recommended phasing in TAM requirements as follows: (1) begin with rail systems only (reasoning that these systems account for the greatest amount of capital assets and have the greatest safety risk exposure); (2) phase in transit systems with 100 vehicles or more between 2 and 4 years after phase 1; (3) consider phasing in transit systems with less than 100 vehicles in revenue service no more than two years after phase 2.

An industry association and three State DOTs said the TAM plan should be required no sooner than 2 years after FTA has issued a TAM plan manual and template. A State DOT requested that FTA extend the proposed implementation deadline from two years to three years, reasoning that the additional time would result in sponsored plans and asset management regimes nationwide that will better meet FTA's objectives. Similarly, two transit operators and a State DOT expressed concern that the two-year time frame is not sufficient to develop a TAM plan, inventory and assess the conditions of assets, and meet all the requirements stated in subpart C, particularly given the number of agencies and partners that must be involved in the TAM development process. A transit operator recommended that the two-year deadline should be for development of the TAM plan, not implementation.

Several commenters suggested that, while a two-year deadline for tier I transit agencies to develop an initial individual TAM plan is reasonable, the development of a group TAM plan and tier II plans should be extended to three years to allow adequate time for coordination between agencies. A State DOT said FTA should delay the implementation deadline until after all comments have been received for all performance management-related NPRMs in order to ensure cross-functionality for each individual performance management area. Two MPOs urged that the implementation of the FTA TAM rule must be coordinated with the implementation of other planning and safety rulemakings mandated by the authorization statutes and requested a single effective date that starts a phase-in process.

FTA'S RESPONSE: 625.31 Implementation Deadline

FTA believes that the two year statutory timeline is sufficient time for a transit provider to develop and implement a TAM plan. Moreover, the final rule includes an option for a transit provider to submit a written request to FTA for an extension of the implementation deadline.

The final rule provides each transit provider with the opportunity to develop and implement a TAM plan that is tailored to its public transportation system. Todays' final rule does not require a transit provider to conduct a condition assessment on all of its facilities within the two year initial TAM plan development timeframe. Each transit provider may adopt a condition assessment method that is appropriate for its particular operating environment and within its available resources. For example, one commenter suggested and FTA agrees that a transit provider may measure the condition of its assets by measuring the condition of a sampling of like assets.

It is not necessary for FTA to wait to issue a final rule for transit asset management until it issues final rules for safety or planning. Todays' final rule may be implemented in its entirety before the aforementioned rules become effective. FTA and FHWA are aware that transit providers, States, and MPOs will have to comply with the requirements of several rules. FTA will ensure that there is sufficient time for States, transit agencies, and planning agencies to implement the requirements of all related rules.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

625.33 Investment Prioritization

This section proposed requirements for investment prioritization. The investment prioritization provides strategic guidance for improving the condition of assets through both consideration of life-cycle costs and itemization of the actions necessary to achieve desired asset conditions. Each transit provider determines its own approach to investment prioritization and project selection. However, the transit provider is required to base its approach on the policies, goals, objectives, and strategies identified in their TAM plan and ensure that safety is given due consideration. A transit provider's approach to investment prioritization must reflect the balancing considerations of competing priorities in order to maximize a return on investment and achieve a desired state of good repair.

The investment prioritization needs to reflect adequate consideration of safety concerns previously identified within a public transportation system. Moreover, when a transit provider plans for the replacement of an asset, it should ensure that it is complying with all relevant regulatory requirements, including the ADA, which requires that accessibility features be maintained in operating order and are promptly repaired if they are out of service. Certain SGR projects may also be regarded as "alterations" under DOT ADA regulations, and may require additional resources. *See generally*, 49 CFR part 37.

Safety and minimizing life-cycle costs are the most common objectives in prioritizing projects. However, a transit provider may identify additional criteria and factors and weigh them according to local needs. Another criterion that a transit provider may consider is the resiliency of its assets and systems to natural disasters, as described in the NIST National Disaster Resilience Framework[11]. The impact that local concerns may have on condition-improvement costs should be reflected in the investment-prioritization list.

Investment prioritization uses the transit provider's selected prioritization approach and predetermined importance factors to determine rankings. The ability of a project or program to meet the objectives established by the transit provider in its TAM plan should be reflected by a rating. Based on the relative weight a transit provider assigns to each objective, a transit provider can establish a prioritized list of programs and projects. For example, a transit provider may identify track maintenance as the highest priority based on the condition of the track or its maintenance approach as part of its TAM policy. This may result in assigning a higher score to track-asset projects over facility-maintenance projects, even if the facility is in a worse condition, objectively. The costs associated with each project can be assessed and then compared with the transit provider's estimated funding (from all revenue sources) over the TAM plan horizon for each year. The output of the process is a list of ranked projects by asset class that identify assets from the asset inventory required under § 625.25(b)(1) that would be funded over the TAM plan horizon period. A provider should only include programs and projects in its ranked list that it expects to undertake during the time horizon and identify the project year.

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[11] For more information on the NIST National Disaster Resilience Framework, please visit *http://www.nist.gov/el/resilience/*

COMMENTS: 625.33 Investment Prioritization

Numerous public comments addressed the proposed requirements for TAM plan investment prioritization, specified in §§ 625.25(b)(4) (as an element of the TAM plan) and 625.33 (as proposed requirements for investment prioritization process).

Several State DOTs and other commenters said any ranking of projects under § 625.33(b) should be a categorical ranking (High, Medium, Low) and not a sequential ranking (First, Second, Third, Fourth etc.). Several State DOTs and a professional association said this approach is preferred if the investment prioritization must include individual projects rather than keeping the prioritization at the asset class level or program level; however, they would prefer there be no requirement to go below the asset class or program level. Specifically, two of these State DOTs said TAM plans and investment prioritization should focus on "asset class" to avoid conflicts between the TIP and TAM plans and to allow transit agencies of all sizes to advocate for Federal, State, and regional funding. A transit operator said an agency should be able to "bundle" less critical asset renewal and replacement projects to make improvements in a concentrated geographic area and achieve cost savings. An individual commenter suggested that it may be more practical to rank investment priorities within specific asset categories rather than across categories.

A regional commission requested that investment prioritization include categorical ranking (High, Medium, Low) of the projects in addition to the sequential numerical ranking (1, 2, 3, etc.). A transit operator recommended allowing agencies to define their own investment prioritization methodology or allowing the grouping of investment projects using qualitative levels of priority (*i.e.* most critical, critical, less critical) rather than age-based assessments. Similarly, some commenters suggested that assets should be weighted to reflect the criticality of a given asset on system operations.

Several State DOTs and a professional association said an asset management plan should be able to show assets in declining conditions, not just improving and maintaining. Specifically, one of the State DOTs requested that § 625.33(a) be revised to read "A TAM plan must include an investment prioritization that identifies projects to improve or maintain or manage the decline in the state of good repair of capital assets over the horizon period of the TAM plan. Alternatively, an MPO suggested changing the phrase "projects to improve or maintain the state of good repair" to "projects to manage or maintain the state of good repair."

Two State DOTs requested clarification regarding the NPRM statement that "transit providers should consider current and future climate and weather-related hazards as part of their prioritization of investment," asserting that it is unclear which future hazards should be included and which should be excluded from consideration. Two other commenters stated that, without further clarification, this requirement seems unrealistic. A professional association asked if the reference to including "current and future climate and weather-related hazards" meant that an all-hazards approach should be taken to investment prioritization. If so, the commenter asked for an enhanced description of what hazards should be included or excluded.

A State DOT, some transit operators, and a local utility, said that the safety of any asset should be the determining factor in prioritization of asset replacement, rather than the ULB. A State DOT recommended that FTA should reinforce this concept by clarifying the interaction between TAM and safety. A State transit operator proposed that each asset should receive a fixed safety rating based on how important that asset is to safety and funding should be prioritized for assets rated higher on the safety scale.

Several commenters took issue with the phrase "pose an identified unacceptable safety risk" in § 625.33(d). A professional association asserted that by identifying an opportunity to improve safety, a State has not indicated an unsafe condition. Several commenters proposed that FTA strike the reference to projects that are needed to address circumstances that "pose an identified unacceptable safety risk." One of these commenters offered an alternative phrases: "provide opportunities to improve safety or reduction in the frequency and severity of some undesirable events." Other commenters said the rule should state that investment prioritization "must give due consideration to those projects for state of good repair that address safety risk." A transit operator and a private citizen requested that FTA explain how an unacceptable safety risk is to be incorporated in the investment prioritization, and how unacceptable safety risks should be mitigated, financially, if the investment money is not afforded.

One commenter also asked whether there is a requirement to follow the project rankings to address all non-SGR capital assets prior to funding other projects.

Regarding the NPRM preamble statement that a transit provider may identify additional criteria and factors for prioritizing projects (in addition to safety and minimizing life-cycle costs) and weigh them according to local needs, a State public transportation system suggested that FTA clarify that such additional criteria should not take priority over considerations of SGR or system safety. A transit operator asked if FTA is recommending any standardized approach for criteria weighting or whether the weighting of criteria is left to the discretion of the transit provider. A State DOT requested guidance on expected investment prioritization criteria and weighting. A transit operator recommended adding language to acknowledge other factors outside the prioritization criteria (*e.g.*, regional needs, non-asset based priorities, and funding mechanisms/constraints) so there is room for intangibles, outside influences, and other mitigating circumstances that are defendable.

A local transit operator asked whether future acquisitions and construction projects (*e.g.*, system expansion) should be included in the project prioritization. This commenter also asked if projects that prevent assets from falling out of a state of good repair should be given higher ranking if they provide a better return on investment. A State DOT and a local transit agency asked if the investment prioritization should be based on the available budget or the needs. If the prioritization must be constrained then the State DOT commenter said it may not be able to meet the SGR principal of "full level of performance." A transit operator asked how an agency can account for projects/assets for which it would like to apply for grant funding if investment prioritization is fiscally constrained.

A State DOT asked if the investment ranking is binding (that is, if investments must be made in the specific order in the TAM plan).

An MPO and a transit operator requested that FTA provide an opportunity to use alternative approaches to prioritizing projects that matches such grantee characteristics as organizational size and maturity. A transit operator supported the FTA in allowing transit providers to use a selected prioritization approach and predetermined importance factors for determining project rankings. A trade association requested that the final rule not specify the value/capitalization levels, but instead allow each agency the flexibility to form their own capitalization policies.

Regarding the proposed § 625.33(f) requirement that investment prioritization must take into consideration requirements concerning maintenance of accessible features (at 49 CFR 37.161 and 37.163), a transit operator said that other processes should be the basis for complying with ADA requirements and the TAM prioritization process should not include an expansion of the ADA mandate.

A transit operator suggested that existing documents (Metropolitan Transportation Plan (MTP), Regional Transportation Plan (RTP), Statewide Transportation Improvement Plan (STIP, Transportation Improvement Plan (TIP), and Capital Improvement Plan (CIP)) should continue to be the location for documenting specific project listings.

FTA'S RESPONSE: 625.33 Investment Prioritization

The ranking of investment prioritization programs and projects can be categorical (high, medium, low), sequential (first, second, third), or another method that is appropriate for the transit provider. It must, however, indicate which year the transit provider intends to carry out the program or project. The output of the process is a list of ranked projects at the asset class level that identify assets from the asset inventory. FTA will issue guidance on methodologies for investment prioritization and TAM plan development.

FTA notes that the requirement to develop an investment prioritization does not necessarily require a transit provider to invest in that plan. With the exception of 49 U.S.C. 5337 program recipients who are required to identify their projects are included in their TAM plans. However, FTA believes the TAM approach will result in a useable and effective investment prioritization that transit providers are encouraged to use to achieve or maintain a state of good repair for their assets.

FTA disagrees that investment prioritization itemized at the asset level could conflict with the TIP process. FTA believes that it is a best practice for transit providers to first prioritize their own projects based on their own needs, before engaging in larger planning processes in conjunction with the State, the MPO, and other transit providers to establish a prioritized over-arching program of projects for the larger area.

FTA understands that performance targets, and by extension, asset condition, may decline even with good asset management practices in place. The purpose of the final rule is to provide a proactive strategic framework for transit providers to balance competing needs and limited funds in an informed decision making process to reduce the SGR backlog. FTA agrees that" improve or maintain SGR" limits the options available and has modified § 625.33(a) to read "improve or manage the state of good repair".

FTA recommends that transit providers consider climate resiliency and reliability in their investment prioritization by identifying capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure, provide for multimodal capacity increases based on regional priorities and needs, and reduce the vulnerability of the existing transportation infrastructure to natural disasters.[12] For example, severe rainfall events may cause flooding that shuts down operations at a transit maintenance facility. In this case, the continued availability of the asset during such events may require the installation of a watertight perimeter around the facility, which will both protect the condition of the asset and ensure its availability for continued transit operations. FTA is aware of publicly available tools to assist in the identification of vulnerabilities for specific systems or assets, and encourages transit providers to conduct a vulnerability analysis as part of their overall asset management approach. For a TAM plan, FTA recommends that transit providers identify any fixed assets that are located within the current FEMA-published flood hazard area (100-year floodplain), and the degree to which these assets have been built to withstand projected hazards that may occur over the assets anticipated useful life.

FTA agrees that safety is a critical factor in determining the prioritization of asset investments; however it is not the only factor. FTA does not propose a specific methodology for investment prioritization. Safety needs are fluid and any fixed assessment limits a transit provider's ability to respond to the changing environment,

FTA agrees that identifying an opportunity to improve safety does not indicate an unsafe condition. If a transit provider identifies an unacceptable safety risk associated with its asset, it should place that asset higher up in its investment prioritization, to the extent practicable. However, this rule does not establish selection criteria for a transit providers' investment prioritization.

FTA supports the proactive strategic approach of identifying future projects and ranking preventative projects with better return on investment higher in the investment prioritization. The final rule establishes that an investment prioritization is a fiscally constrained list of needed projects, ranked or grouped in order of priority. Therefore, a transit provider has discretion in prioritizing projects and programs over the TAM plan horizon period.

FTA recognizes that no funding is guaranteed but most resources can be realistically estimated. For example, for FTA formula grant funds, a transit provider may not know the exact amount of funds it may receive two years hence, but it can make a reasonable determination of the projects it wants to pursue if it does receive the funding. Other funding that may be less estimable, such as discretionary funding, may require a TAM update.

FTA reiterates that the NPRM did not propose that a transit provider abandon its existing project listing documentation processes nor are these requirements intended to supplant existing decision making practices.

FTA disagrees that consideration of the costs associated with maintaining accessible features is an expansion of the existing mandate.

FTA further clarifies that the ULB is used for performance measure metrics not for investment prioritization.

FINAL RULE:

FTA is revising this section to reflect that programs or projects within an investment prioritization can be for either improving or managing state of good repair. FTA also has revised this section to require that investment prioritization only apply to assets for which a provider has direct capital responsibility.

625.41 Standards for Measuring the Condition of Capital Assets

Pursuant to 49 U.S.C. 5326(b)(1), the definition of state of good repair must contain objective standards for measuring the condition of capital assets. FTA proposed to define state of good repair for public transportation capital assets as "the condition in which an asset is able to operate at a full level of performance." This section proposed objective standards for equipment, rolling stock, facilities and infrastructure that are intended to further define "full level of performance," and clearly indicate when an asset is in a state of good repair.

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[12] Fixing America's Surface Transportation Act ("FAST") (Pub. L. 114–94).

The objective standards allow transit providers to operationalize and quantify state of good repair to audit their SGR performance. To accomplish this, FTA proposed three objective standards, detailed in section 625.41. The proposed objective standards are: (1) the asset is able to perform its manufactured design function; (2) the use of the asset in its current condition does not pose an identified unacceptable safety risk; and (3) the asset's life-cycle investment needs have been met or recovered, including all scheduled maintenance, rehabilitation and replacements. The objective standards allow for an auditable SGR definition that is high-level and broad enough to incorporate existing transit asset management practices at transit providers of different modes, different sizes, and different operating environments.

An asset is in a state of good repair when each objective standard is met. The first objective standard in § 625.41(b)(1) requires that an asset is able to perform its manufactured design function. This objective standard takes into consideration that an asset may be in poor condition, but is still able to operate. For example, a transit provider may institute a slow zone to allow a rail car to operate on deteriorated track that can no longer support rail cars traveling over it at the original design speed, but can support rail cars traveling at slower speeds. In this case, the infrastructure track segment would not meet this SGR standard because it was designed to carry railcars at a speed that its current condition will not support. Achieving state of good repair means not accepting compromised performance from assets that are over age or of deteriorated condition.

The next objective standard in § 625.41(b)(2) requires that an asset not pose an unacceptable identified safety risk. Going back to the previous example, track deterioration can lead to derailments and other safety hazards and, depending on the condition, may not meet this standard. If the asset is operating according to its designed function, but is introducing a safety risk to the system that the Accountable Executive considers to be unacceptable, then the asset is not in a state of good repair. A safety risk may be identified through a number of ways, including through a transit provider's practice of Safety Management Systems (SMS) as proposed under FTA's notice of proposed rulemaking for public transportation agency safety plans. Achieving state of good repair means not compromising designed performance to mitigate safety risks or otherwise accepting safety risks from assets that are over age or in deteriorated condition.

Lastly, the third objective standard proposed in § 625.41(b)(3) requires that the life-cycle investment needs of the asset be met. This means that the inspection, maintenance, rehabilitation, and replacement schedules have been met or recovered for the asset. Deferring maintenance on an asset may not have immediate consequences for an asset's safety, reliability, or performance. However, deferred maintenance leads to these long-term consequences in the future. Thus, it cannot be said that an asset is in a state of good repair, when the maintenance practices that will maintain the asset's full performance level are being deferred.

An asset that meets all three objective standards is in a state of good repair.

COMMENTS: Objective Standard—"Capital Asset Is Able To Perform Its Designed Function"

A few commenters provided input on the SGR standard that an asset must be able to perform its designed function, as specified in § 625.41(b)(1). A transit operator said FTA should add the word "constructed" to the term "manufactured design function" since many facilities and infrastructure assets are constructed on-site rather than manufactured. A couple of transit operators said the inclusion of the term "designed function" in the SGR standard neglects to include the assets' performance and operating conditions. In the case of legacy transit operators, these commenters said the designed function of an asset may be different than the required performance function.

Another commenter asserted that this proposed SGR standard is not objective because the rule provides no definitions for "perform" and "design standards," which will make it impossible for FTA and other stakeholders to accurately compare agencies against each other. This commenter recommended that FTA define each of these terms, provide transit agencies with additional guidance beyond the definitions that is applicable to varying vehicles and infrastructure, and request comment on the inclusion of specific, measurable statistics (*e.g.*, requiring a vehicle to have fewer than a certain number of maintenance-related breakdowns or fewer than a certain number of maintenance-related passenger injuries per 100,000 revenue miles) to increase the objectivity of this standard.

FTA'S RESPONSE: Objective Standard—"Capital Asset Is Able To Perform Its Designed Function"

This final rule clarifies that the term "designed function" is intended to include facilities that are constructed on-site rather than manufactured. FTA agrees that the designed function objective standard does not explicitly include assets' performance and operating conditions. When used in concert with the other objective standards, specifically, the lifecycle investment needs standard, a representation of the asset is more fully fleshed out. In addition, a SGR determination is aspirational and should reflect the absence of compromises accepted due to over age and deteriorated assets. With regard to comments about legacy assets, FTA recognizes that the designed function may be outdated. However, this standard is intended to identify the extent of those potential discrepancies.

FTA disagrees that this standard is not objective. The intention of the SGR determination and objective standards is to provide agencies with a method to measure their assets' SGR based on standard principles, as provided by FTA. The final rule also establishes national performance measures to allow for comparisons across similarly situated providers. The metrics proposed by commenters, such as maintenance-related injuries per 100,000 revenue vehicles, are not asset-based measures, but are an output metric of a process that, prior to this final rule, has not been standardized.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

COMMENTS: Objective Standard—"Use in Current Condition Does Not Pose an Unacceptable Safety Risk"

Some public comments provided input on the SGR standard that use of the asset in its current condition does not pose a identified unacceptable safety risk, as specified in § 625.41(b)(2).

Several State DOTs said the final rule should delete the phrase "[assets that] pose an identified unacceptable safety risk" and use a different formulation, possibly such as to projects that "provide opportunities to improve the safety of an already safe system." These commenters also said the rule should specify that, "by identifying an opportunity to improve safety, a State has not indicated an unsafe condition."

A professional association and a couple of State DOTs supported the rule's language in § 625.41(b)(2) as a measure for SGR, but said FTA needs to ensure that a provider or plan sponsor is not required to maintain records and report to the FTA that a specific asset has an "identified unacceptable risk."

A trade association and two transit operators stated that identifying "unacceptable safety risks" cannot be defined or addressed until FTA has established safety performance criteria, through notice and comment, for all modes and minimum safety performance standards for vehicles in revenue service.

A transit operator said "unacceptable risk" should not apply in an asset management planning context because such risks will be immediately addressed through safety initiatives or safety planning prior to adoption measures through a TAM plan.

Stating that "unacceptable safety risks" seems subjective, a transit operator suggested that transit agencies should use procedures under their SMS program to determine unacceptable safety risk and that FTA require transparency on what a provider defines as unacceptable safety risks. Another commenter similarly asserted that this proposed SGR standard is not objective because the rule provides no definitions for "known," "unacceptable," and "safety risk," each of which could be interpreted differently by agencies, which would make it impossible for FTA and other stakeholders to compare transit agencies to each other accurately. This commenter recommended that FTA define each of these terms, provide transit agencies with additional guidance beyond the definitions that is applicable to varying vehicles and infrastructure, and request comment on the inclusion of specific, measurable statistics (*e.g.,* requiring a vehicle to have fewer than a certain number of maintenance-related breakdowns or fewer than a certain number of maintenance-related passenger injuries per 100,000 revenue miles) to increase the objectivity of this standard.

FTA'S RESPONSE: Objective Standard—"Use in Current Condition Does Not Pose an Unacceptable Safety Risk"

FTA understands the uncertainty expressed in some comments regarding compliance with the requirements of this final rule that are related to safety, in the absence of a final National Public Transportation Safety Plan and a final rule for public transportation agency safety plans. However, FTA believes that the requirements of this final rule can be implemented in the absence of the two aforementioned components of the National Safety Program because they are not dependent on the requirements under a final National Safety Plan or a final rule for Public Transportation Agency Safety Plans. Operators are already making decisions about what risks and level of risks are unacceptable within their system. Again, the final rule is scalable and flexible.

This proposed standard has both an objective and subjective component. Whether or not the condition of an asset poses a particular risk is an objective determination—it either does or does not pose a risk. Whether or not that risk is unacceptable is a subjective determination. The final rule neither defines nor prescribes standards for "unacceptable safety risk." To the contrary, intentionally, the rule leaves the determination of what constitutes an "unacceptable safety risk" to the individual transit provider. FTA believes that each provider, not FTA, is in the best position to make a determination, based on knowledge of both its unique operating environment and availability of resources, regarding the categorization and mitigation of risks, to include managing risks arising from an asset not being in state of good repair. Therefore, it would be up to the individual provider to determine what investments should be made to improve the performance of its transit system. The rule does not require that a transit provider rely on performance target as the primary driver in setting its investment priorities. Instead, the rule final requires a transit provider to give due consideration to those assets that pose an identified unacceptable safety risk when setting its investment priorities.

FTA's approach to TAM is consistent with its proposed SMS approach to safety. A fundamental aspect of transit asset management is the monitoring of asset condition data as an indicator of system performance. Similarly, SMS is a formal data-driven approach to managing safety risk and assuring the effectiveness of safety risk mitigations. SMS does not require that an organization take a specific action to address a specific safety risk. Identification, analysis and mitigation of safety risks, and any other risks that exist within a transit system, are activities that a transit provider should already be engaging in.

FTA does not agree with the commenter who suggested that public access to safety risks that may be identified in a TAM plan or safety plan may increase safety risks for the rail system. The NPRM did not propose that a transit provider document safety risks in its TAM plan. In making a determination regarding the state of good repair of an asset, the provider must consider whether or not an asset poses an identified unacceptable safety risk. Where the condition of an asset may pose an unacceptable safety risk, the final rule requires a provider to apply an appropriate level of consideration to those assets when making investment prioritization decisions.

FINAL RULE:

FTA is not making any changes in the final rule related to these comments.

COMMENTS: Objective Measure—"Lifecycle Investment Needs of the Asset Have Been Met or Recovered"

Several public comments provided input on the SGR standard that life-cycle investment needs of the asset have been met or recovered, as specified in § 625.41(b)(3).

Several commenters said the life-cycle maintenance condition must be flexible and fluid. For example, some of these commenters said a bus that is due for maintenance would not be rendered out of good repair because the oil change was delayed. One transit operator urged that maintenance schedules should not be so rigid as to incorrectly label a vehicle out of good repair based on minor deviations from the regular maintenance schedule. A transit operator stated that the maintenance life-cycle can be impacted by major overhauls and repairs, but not minor maintenance tasks. This commenter recommended the phrase "meets required level of service performance, and whether major maintenance and rehabilitation have been completed." One commenter said there are times when certain assets do not meet the life-cycle expectations, and the agency must weigh the cost of continuous maintenance with the cost of replacement, regardless of the lifecycle. A couple of commenters said FTA should recognize that regulatory and technology changes could render assets obsolete prior to reaching their ULB ages and FTA's minimum life requirements.

A State DOT said FTA should clarify the term "all scheduled maintenance," asking if it is just those items tied to safe operation of service or inclusive of oil changes and auxiliary systems maintenance. A couple of transit operators stated that the standard should be clarified to show that the rehabilitation and replacement elements are "as necessary" rather than "scheduled." One of those commenters stated that the proposed wording may lead agencies to prioritize meeting the SGR definition at the expense of making maintenance or replacement decisions based on condition or risk assessments. According to this commenter, it could also incentivize agencies to specify less aggressive maintenance plans in order to achieve greater compliance with the SGR definition. The other commenter noted that "scheduled" rehabilitation and replacement are not always necessary and can reasonably be postponed or cancelled without any notable effect on an asset due to varying usage and wear patterns. A couple of commenters suggested that FTA remove the term "scheduled maintenance" in order to limit the SGR standard to meeting all capital investment needs through an asset's life-cycle, as opposed to day-to-day operating expenditures.

A transit operator asked if, by including this SGR standard, FTA is asking if asset maintenance plans are being followed.

Another transit operator said that the addition of this SGR standard is not required under the authorization statute, 49 U.S.C. 5326. The commenter asked, unless FTA is willing to define the life-cycle investment needs of each asset, how will it be determined if they have been met? Another transit operator requested clarity and additional information on the exact meaning of "recovered" in terms of life-cycle investments being met or recovered, and how to make such a determination. A different commenter also expressed concerns that life-cycle needs are identified by the transit agencies and are not standardized where needs are equal, and that this standards does not take into account the quality of maintenance. To remedy this flaw, the commenter recommended that FTA develop standard guidelines for maintenance requirements, with variations permitted for factors such as climate conditions and operating conditions.

An individual commenter asked a number of questions about this provision: 1–What about unscheduled maintenance and repair needs such as a bus engine or transmission that needs to be replaced? 2–What are "rehabilitation" schedules when applied to buses? 3–How should assets such as engines and transmissions be tracked, reported, and prioritized as compared to buses? 4–How should ULBs be determined for buses as compared to major components such as engines and transmissions?

FTA'S RESPONSE: Objective Measure—"Lifecycle Investment Needs of the Asset Have Been Met or Recovered"

This final rule establishes three objective standards for the SGR determination. Each of the standards will be evaluated at the transit provider level, which is where the SGR determination occurs. FTA does not define an asset's life-cycle investment needs, which may include its maintenance schedules, rehabilitation policies and other operational decisions. A transit provider is in the best position to determine the life-cycle needs of its assets.

Each transit provider must define its assets' life-cycle investment needs, and thus must determine if the needs have been met or recovered. Meeting the life-cycle investment needs of an asset means that the maintenance, preventative and responsive, major and minor, has occurred on a schedule and as needed. Recovering the life-cycle investment needs means that the asset may have not strictly adhered to its schedule, but it has received all of the maintenance established for a particular point on its life-cycle.

FTA recognizes that some maintenance activities are more impactful to condition, costly, and time dependent. However, FTA also notes that long term delay of relatively minor maintenance has an impact on condition over time. Thus, FTA did not propose a minimum maintenance level for consideration in an asset's life-cycle investment needs. Further, FTA recognizes that unscheduled maintenance often is more impactful initially, but posits that scheduled maintenance can help to reduce unscheduled maintenance and provide valuable information to the local decision making process.

FTA disagrees with the commenter who states that the SGR standard is not required under MAP–21. The law explicitly requires FTA to develop a definition of state of good repair which includes objective standards.

FTA is developing guidance and technical assistance to assist transit providers in how to establish life-cycle investment needs. The guidance will address the questions posed by commenters regarding how to develop ULBs for assets and subsystems, how to apply rehabilitation schedules, and more.

FINAL RULE: FTA is not making any revisions in the final rule related to these comments.

COMMENTS: Objective Standards—Other Comments

A couple of commenters said § 625.41(b) should read ". . . condition sufficient to enable the asset to operate *safely* at a full level of performance."

A few commenters raised other general concerns with the SGR standards. A transit operator said FTA should promulgate final safety performance criteria for all modes of public transportation and minimum safety performance standards for vehicles in revenue operations. A tribal government expressed concern that, while the SGR standards make sense from a maintenance and depreciation standpoint, they do not make sense if funding is not available for capital replacement. This commenter asserted that there will be times when services will shut down in order to comply with these standards.

A transit operator said the SGR standards in this section are inconsistent with the definition provided in § 625.5 and the principles provided in § 625.17. The commenter said the final rule should align these three components of the regulation. A transit operator noted that condition by itself is not even a factor in considering whether an asset is in SGR (per the proposed SGR definition and § 625.41 standards).

One commenter asserted that none of the three proposed SGR standards are sufficiently objective to comply with the requirement of MAP–21. A transit operator asked how agencies could determine if assets are in SGR if agencies are not required to collect and report uniform objective measurements of safety performance, reliability performance, efficiency performance, and quality performance. Another transit operator suggested that limiting the designation of asset condition as a binary response of "Yes" or "No" in terms of whether the asset in in a state of good repair would be simpler.

One commenter requested guidance on measuring asset conditions. A couple of commenters requested guidance on calculating SGR backlog. Expressing concern that the proposed SGR criteria do now allow for sufficient flexibility in determining whether an asset is in an SGR or not, a transit operator recommended that the proposed SGR criteria be provided as guidelines, rather than mandatory criteria for determining SGR.

FTA'S RESPONSE: Objective Standards—Other Comments

FTA proposed an aspirational SGR definition which identifies an asset at its best operation performance condition. Full level of performance is not an absolute condition, but it can be measured objectively by the three standards identified in § 625.41 (b) (1) through (3).

FTA recognizes that there are more SGR needs than funding available for state of good repair projects. The National TAM System provides a strategic, proactive framework for decision making.

FTA disagrees that the proposed SGR definition (§ 625.5), SGR principles (§ 625.17), and SGR standards (§ 625.41) are inconsistent with one another. Please refer to FTA's response to the comments on the state of good repair definition in § 625.5.

FTA disagrees that the condition of an asset is not a factor in SGR determination. Each of the objective standards is a measure of an asset's condition. FTA also disagrees that the standards are not sufficiently objective. Each transit provider can use the standards established in the final rule to determine if its assets are or are not in a condition to meet each standard, and thus operating at a full level of performance, which indicates a state of good repair.

FTA agrees that a binary (yes or no) determination of SGR would be simpler, but it would not meet the statutory requirement for objective standards for SGR.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

625.43 SGR Performance Measures for Capital Assets

In accordance with 49 U.S.C. 5326(c)(1), this section proposed four SGR performance measures based on the SGR objective standards proposed in § 625.41. FTA proposed one measure for each asset class. Each SGR performance measure is based on using calculable quantities of asset conditions to assess state of good repair. FTA's priority in selecting performance measures were to minimize reporting burden, especially on small operators, and to provide a meaningful and consistent basis for transit providers to compare their own state of good repair performance over time. In some cases, this means that FTA selected a proxy for measuring state of good repair, rather than measuring asset condition directly. Although FTA only proposed four performance measures in this rule, one per asset category, a transit provider may still apply its asset management systems to its entire inventory of capital assets, including those assets for which no performance measure has been established.

Performance Measures for each asset class might include several SGR measures within each asset category (rolling stock, infrastructure, equipment and facilities). For example, a transit provider that has a fleet of 40′ buses, light rail vehicles and paratransit vans would have 3 rolling stock performance measures: percent of 40′ buses that have met or exceeded their ULB, percent of light rail vehicles that have met or exceeded their ULB, and percent of paratransit vans that have met or exceeded their ULB.

COMMENTS: Performance Measures—General

Several commenters recommended flexibility in the use of performance measures. A few transit operators and a State DOT said that FTA should allow transit providers the flexibility to right-size their own performance measures and provide flexibility in the classification of certain assets. One commenter recommended replacing the entirety of § 625.43 with a simple statement that "performance measures for each asset class must be set and approved by the responsible executive at each agency."

Other commenters provided other suggestions for modification of the proposed performance measures. A couple of commenters recommended weighting (or allowing agencies to weight) the performance measures because some assets are of higher value or are more critical than others. A few commenters recommended a phase-in period for asset classes. Specifically, some of these commenters said FTA's focus should be on rolling stock and infrastructure; equipment and facilities should be phased in three to four years later. A transit operator proposed a comprehensive approach to measuring the condition of all transit assets, including age, physical condition, and performance measurements. Further, this commenter suggested that when grouping assets and measuring condition and performance, FTA should consider the idea that utilization impacts measures of performance at the asset category level. The commenter also cautioned that care must be taken when "averaging" or rolling assets into categories where variability in condition and performance can be hidden. A State DOT said asset performance measures should account for risk. A transit operator stated that FTA should consider permitting the terms "systems," "guideway elements," "vehicles," and "stations" to be used as asset categories for rail transit properties.

Several commenters discussed ULBs. A State DOT said, for equipment and rolling stock, the ULB described in the proposed rule does not provide a useful overview of the asset's actual condition or a practical measure on which to base investment decisions. The commenter requested the flexibility to use its own life-cycle analysis to determine the appropriate useful life. One commenter recommended adding a requirement for RTAs to provide ULBs to State Safety Oversight Agencies (SSOAs) for review and comment. A transit operator said if FTA wishes to use a different ULB for a TAM plan than for grant authorization, the TAM plan useful life should not be shorter than grant useful life. In reference to FTA's statement that it anticipates publishing "a default ULB based on TERM data that may be used in lieu of a local condition-based calculation of ULB," several commenters said FTA should cite where and when this default ULB will be published, provide an explanation of how the ULB measure will be calculated, and ensure that the default ULB is available to transit providers before initial targets will need to be set. A tribal government requested clarification regarding the NPRM statement that providers may use FTA-established default ULB in lieu of a local condition-based calculation of ULB.

Asserting that ULB of agency revenue vehicles is not alone a sufficient metric for measuring progress on improving SGR, one commenter recommended that FTA consider including additional performance metrics, such as measures relating to mechanical failures, effects on safety (*e.g.,* passenger injuries per 100,000 revenue miles attributable to maintenance failures). This commenter also discussed the potential costs and benefits associated with implementing this recommendation.

A couple of commenters stated that none of the proposed performance measures are tied directly to the proposed definition of SGR, which effectively requires that all three standards outlined in § 625.41 are met. The commenters said FTA should clarify that performance measures serve only as a "proxy" for measuring SGR—they cannot be used alone to calculate the SGR backlog.

A trade association urged FTA to issue guidance on performance measures. A transit operator requested more guidance on how to categorize assets such as tunnels, which the commenter said could fall under facilities or infrastructure.

Regarding the NPRM statement that FTA would support transit providers that elect to use more sophisticated performance measures, a transit operator asked how FTA intends to collect this data in the NTD if every agency uses a different measure for each asset class/category. This commenter also asked if FTA is open to using different measures across all three of the major asset categories, reasoning that in some instances, (*e.g.*, rolling stock) assets can and should be measured using condition and/or performance.

FTA'S RESPONSE: Performance Measures—General

FTA has developed a combination of performance measures using a variety of approaches, including age, condition, and performance. The measures are actionable and scalable. FTA encourages transit providers with sophisticated TAM practices to pursue more advanced approaches, in addition to setting targets for the performance measures in § 625.43.

FTA believes the industry is prepared to use SGR performance measures and a phased-in approach is not necessary. Minimizing reporting burden was a major consideration in FTA's selection of each measure. FTA believes that the relatively simple and straight-forward approach it selected for each measure will lend itself to immediate implementation.

FTA proposed the ULB option to allow a transit provider to incorporate consideration of its operating environment into its performance targets. FTA will publish default ULBs on its asset management Web page concurrent with publication of the final rule, and as suggested, will document the date of publication. FTA is also developing guidance for transit providers to use in calculating local-condition based ULBs.

FTA agrees with the comment that the SGR performance measures are a "proxy" for measuring SGR and they cannot be used to calculate the total SGR backlog. Further, the performance measures serve as a "proxy" for SGR and cannot necessarily be used to determine an assets' SGR. Similarly, the TERM Scale is calibrated such that the number of cases where a facility is below condition 3.0, but still meets all three objective standards for SGR in 625.41, and vice versa, should be relatively small. As discussed earlier, however, FTA believes that the lower burden on the industry of using a 3.0 condition threshold on the TERM Scale, rather than a 2.5 threshold, merits using this in the performance measure. However, almost all rail guideway infrastructure that has a slow zone in place will, by definition, not meet the three objective standards for SGR in 625.41.

FTA clarifies that each transit provider or sponsor is required to report their performance measure targets to the NTD as per § 625.43, regardless of the approach used to determine them.

FTA will develop guidance and technical assistance for transit providers to assist transit providers in applying each of the performance measures.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

625.43(a) Equipment- (non-revenue) service vehicles

This section proposed the performance measure for non-revenue, support-service and maintenance vehicles is the percentage of vehicles that have met or exceeded their useful life benchmark. To determine the ULB, a transit provider may either use the default ULB established by FTA or a ULB established by the transit provider in consideration of local conditions and usage and approved by FTA.

COMMENT: Performance Measure—Equipment

Several transit operators noted that the definition provided for equipment in § 625.43(a) is significantly different than the definition provided in § 625.5. One commenter said this provision implies that equipment is only non-revenue vehicles, while the definition states something more burdensome. A transit operator recommended that non-revenue vehicles be included in the vehicle asset class. Another transit operator said equipment that impacts operations should be defined as "equipment," and non-revenue vehicles are not always considered equipment, but usually are grouped as part of a fleet. Several commenters concluded that the transit agency should be allowed to define and track "equipment" that is relevant to their service or risk model.

A State DOT recommended the following additional criteria for equipment (and rolling stock): Average ULB, measured as a percentage.

A transit operator said the term "equipment" is typically employed in regards to portable tools, work machinery, or components and not reserved for non-revenue vehicles.

FTA'S RESPONSE: Performance Measure—Equipment

FTA agrees that the definition of equipment (§ 625.5) and the equipment performance measure (§ 625.43) differ. Example 1 in Appendix B to the final rule explains the differences. Specifically, the SGR performance measure for equipment only applies to non-revenue service vehicles; the Asset Category equipment includes all "articles of expendable, tangible property having a useful life of at least one year;" and the TAM plan requires all non-revenue service vehicles and owned equipment over $50,000 in acquisition value. Non-service vehicles are an easily understood and readily identifiable category of equipment, and the age-based performance measure is the most-simple and straight-forward performance measure available. Thus, FTA believes that transit systems of all sizes will be reasonably able to implement this measure.

FTA did consider establishing other performance measures for different types of equipment, but ultimately declined to do so based on a desire to minimize reporting burden and there being relatively few ready-to-implement candidate performance measures for other types of equipment at a national level. For example, FTA's existing TERM Model does not have particularly robust treatment of equipment. Further, FTA did not receive any comments suggesting another performance measure for equipment. FTA, though, is considering conducting additional research in this area.

FTA recognizes that non-revenue service vehicles are not always labeled as equipment at every transit provider. However, FTA believes this is a minor burden to align the transit provider asset category for the required SGR performance measure calculation.

A transit provider should conduct its performance measure calculation by mode, which means a ULB cannot be averaged across modes. A transit provider may define, calculate, and track additional performance measures and targets.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

625.43(b) Rolling stock

This section proposed the performance measure for rolling stock is the percentage of revenue vehicles within a particular asset class that have either met or exceeded their ULB. To determine the ULB, a transit provider may either use the default ULB established by FTA or a ULB established by the transit provider in consideration of local conditions and usage and approved by FTA.

COMMENTS: Performance Measures—Rolling Stock

Many public comments provided input on the performance measure for rolling stock, as specified in § 625.43(b).

Several transit operators noted the deficiencies of an age-based performance measure and requested flexibility in determining ULB for rolling stock. Several commenters expressed concern that for many agencies (notably smaller and rural agencies), age-based ULB reporting for rolling stock may be inadequate and provide a skewed view of the condition of a particular agency's assets. Several of these commenters suggested that individual agencies should have the option of utilizing an age-based reporting format and also be allowed to adopt additional or alternative means of condition assessments (*e.g.,* by vehicle type as well as asset class). These commenters also said a strict age-based reporting system would discourage agencies from strong maintenance practices, since even a well-maintained, fully functional bus would fail the test of age based asset condition reporting. A few commenters said SGR for rolling stock should be based on mileage or maintenance history, rather than only age. Another commenter said FTA should consider a condition-based evaluation of vehicles. A transit operator recommended that FTA specify that age-based performance measures are a proxy and not a direct measure of condition when used to evaluate state of good repair.

Asserting that many electric vehicles have a useful life that may be largely independent from a strict age-based assessment of the SGR, a transit operator urged FTA to provide clarity regarding how ULB and the standard useful life requirement would apply to electric vehicles. A couple of commenters said this section should reference the standards at 49 CFR part 38.

FTA'S RESPONSE: Performance Measures—Rolling Stock

FTA proposed an age based performance measure for rolling stock. This measure is simple, well understood, and accessible to all transit providers. FTA believes that this performance measure is appropriate to address the national TAM system goals.

FTA notes that transit providers will be able to account for variations in maintenance practices and operating conditions by adjusting the useful life benchmark for particular fleets of vehicles. That is, a well-maintained vehicle may have a longer ULB and thus would not meet or exceed their ULB until a later date with regard to a less well-maintained vehicle. FTA encourages transit providers to develop performance measures for rolling stock, in addition to those required in § 625.43, that are more sophisticated and use advanced methods of calculation such as condition, performance, or a risk based models for use at their agency. FTA recognizes that age is not necessarily the most accurate performance measure available. However, age is a simple and widely-used performance measure for vehicles that can approximate the condition of rolling stock assets for capital investment planning.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments. Section 625.43(b) requires a measure for rolling stock that is based on the percentage of rolling stock that have met or exceeded their ULB. This performance measure is applicable to all asset classes of revenue vehicles. For example, a transit provider operating buses, replica trolleys, paratransit vans, and light rail vehicles would establish a performance target for each asset class. Each performance target would quantify the percentage of rolling stock in each class that is over the transit provider's ULB for that asset class.

Both the equipment and rolling stock measure assume that most vehicles provide reliable service for a predictable period of time (adjusted by level of usage for some types of assets), after which they should be replaced. Since there is typically a long lead time for replacing transit vehicles, this measure reflects the best practice of planning for the replacement of transit vehicles as they reach a certain age.

625.43(c) Infrastructure-rail fixed-guideway track, signals, and systems

This section proposed the performance measure for rail fixed-guideway track, signals, and systems is the percentage of track segments, signal, and systems with performance restrictions.

COMMENTS: Performance Measures—Infrastructure

A couple of commenters expressed concern with using performance restrictions (*i.e.,* slow zones or slow orders) as an indicator of asset condition. A State DOT said a slow zone may be imposed to address maintenance of a rail bridge, but has no connection to the state of good repair of the catenary, track or signal system. A transit operator said slow zones can be temporarily alleviated by short-term fixes to track, which do not resolve the underlying problems or create an asset that is truly in a state of good repair, and the connection is more tenuous for other asset types. The commenter said ULB may be more useful for these assets. However, this commenter also acknowledged that the performance restriction metric as applied broadly to this asset category may be an incremental step toward capturing more complete information by asset type, and that agencies may be asked to supply additional information as the industry develops more sophisticated asset tracking capabilities. A State agency said the infrastructure performance measure may discourage RTAs from issuing restrictions when needed, which could reduce safety.

A few commenters requested clarification about the parameters for developing performance measures for infrastructure assets. A transit operator specifically asked what standards would apply to calculating the percentage of a system subject to performance restrictions in response to a single defective track component. The commenter also asked if the measure would be calculated be based on the length of the signal blocks affected; the relative share of the defective component among all components of the same asset class; or by some other method. Another transit operator asked how bus systems that do not have guideway should report on assets within the infrastructure asset class (*e.g.,* systems).

A transit operator recommended that FTA align the components of the infrastructure asset class with the previously published asset management guidelines. This commenter also recommended utilizing a performance metric of age as a percentage of remaining useful life to assess the performance of infrastructure.

A transit operator said this provision should be subdivided to into three separate parts: Track, signals, and systems. However, another commenter said systems and signals be an element of their own and not included in the heavy rail element of infrastructure. A State DOT opposed any requirements that might conflict with the well-established, industry wide National Bridge Inventory (NBI) Rating Scale.

FTA'S RESPONSE: Performance Measures—Infrastructure

FTA recognizes that slow orders may be issued for bridge maintenance. The infrastructure measure is a proxy for both track condition and underlying guideway condition. However, FTA neither intends nor anticipates conflict with the National Bridge Inventory (NBI) rating scale or other established structural policy and procedures.

Transit providers should use the data gathered to comply with the final rule to improve their decision making. There is no penalty or reward for target attainment.

The asset category for infrastructure includes more asset classes than the SGR performance measure, which only includes rail transit infrastructure. FTA encourages transit providers to develop additional performance measures for infrastructure assets such as signals and systems.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments. Section 625.43(c) requires a measure for infrastructure based on the percentage of guideway directional route miles with performance restrictions. This performance measure would be applicable to all rail fixed guideway infrastructure. Most transit providers already collect data on slow zones—this performance measure would standardize their reporting.

The performance-based approach is based on a regular, comprehensive assessment of a system's performance and relies upon the assumption that as assets age, they become less durable and reliable, resulting in decreased operational performance. The ability of an asset to safely and reliably perform its assigned function at a full-performance level is at the heart of state of good repair. The performance-based approach requires integration of operations and capital maintenance activities and is particularly beneficial because it focuses on the actual outcomes of capital assets being in a state of good repair.

625.43(d) Facilities

This section proposed the performance measure for facilities is the percentage of facilities within an asset class, rated below condition 3 on the TERM scale.

COMMENTS: Performance Measures—Facilities

Most of the commenters on this topic either requested clarification on or else proposed modifications to FTA's use of the TERM scale. Several commenters suggested that FTA should not alter its approach to the TERM scale and revert back to a threshold rating of 2.5 under the existing TERM system. For example, two transit operators expressed concern with the TERM scale defined in the proposed rule because FTA's Asset Management Guide sets 2.5 as the asset condition threshold for "adequate," while the NPRM proposed 3.0 as "adequate." One of these commenters asserted that this change would be problematic for agencies that have already begun working on transit asset management. Similarly, another commenter stated that the proposed SGR level of 3.0 is a move in the wrong direction and suggested that the adequate level be moved to level 1 or level 2.

Other commenters said use of TERM and the TERM scale should be optional, not required. A transit operator proposed using an industry-established system like the Facilities Condition Assessments and the Facilities Condition Index for buildings and facilities. Another transit operator said FTA should consider extending the ULB and asset age to all asset types, which will be more attainable for agencies than the condition assessment metric prescribed for facilities. The commenter said requiring all assets in this category to have a full condition assessment with a 1–5 ranking based on the TERM scale will be extraordinarily expensive for larger agencies and may also be cost-prohibitive for smaller agencies with fewer assets and less funding. A transit operator recommended using a performance metric of age as a percentage of remaining useful life to assess the performance of facilities. An MPO supported the condition-based approach proposed for measuring the condition of facilities and encouraged FTA to consider the inclusion of similar measures, in addition to the age-based approach, that were proposed to measure rolling stock and equipment conditions.

A State DOT said it currently performs a condition assessment for stations using a similar 0–9 scale as the rail bridges, and it is not familiar with the 1–5 TERM rating system. A transit operator requested clarification about the characteristics of a facility that would be determinate of specific ratings on the TERM scale and also about the parameters for defining facilities asset classes for purposes of grouping and reporting. The commenter stated that use of the TERM scale, in the absence of uniform standards for assessing the SGR of facilities, risks fostering an illusion of precision and comparability across properties. Absent such parameters, the commenter suggested revising the proposed performance measure for facilities to read: "Percentage of Facilities within an asset class in marginal or poor condition," which would afford grantees with the flexibility they will need to define evaluation criteria based on their current practices.

A transit operator said this provision may benefit from measuring ADA compliance with the 49 CFR part 37 standards, at least with respect to sidewalks, walkways, lobbies, vertical circulation, signage, and platforms.

Another transit operator stated that FTA has included equipment that is located in the facilities, but some equipment does not lend itself to a condition-based evaluation and should instead be an age-based evaluation.

FTA'S RESPONSE: Performance Measures—Facilities

FTA proposed a condition based performance measure for the facilities asset category using the TERM scale. As previously mentioned, FTA did not set the performance benchmark at 2.5, because a benchmark of 2.5 would require all transit providers subject to the final rule to use the TERM-Lite model to calculate a 2.5 rating. The TERM scale is an integer based scale, thus a direct measure of condition rating 2.5 is not possible. In contrast, condition ratings to one decimal point are produced by the TERM-Lite model as an estimate of condition between condition assessments. Thus, FTA is setting the benchmark at 3.0, as this will reflect the actual results being produced by transit providers carrying out their own condition assessments.

FTA does not agree that TERM scale should be optional, but does agree that using the TERM-Lite model is optional. The TERM scale effectively acts as a standard for reporting facility condition and is already a well-known tool within the transit industry.

The condition-based SGR performance measure for the facility asset category is not equivalent to the condition assessment element of TAM plan § 625.25(b)(2). The facility grouping and reporting asset class are determined by the asset inventory asset classes. The asset inventory level of detail is commensurate to the level of detail provided in the transit providers' program of capital projects. Further, the subsystems and components of each asset category are determined by the transit provider, in their asset inventory. FTA recognizes that the subdivision of component asset classes within the facility asset category may differ from provider to provider.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments. Section 625.43(d) requires a condition-based performance measure for facilities based on the percentage of facilities with a condition rating of less than 3.0 on the TERM). The TERM Scale rates asset condition on a 1 (poor) to 5 (excellent) scale. This condition-based approach would require a transit provider to conduct periodic condition assessments of its assets using a set of standardized procedures and criteria. This approach directly identifies the condition of each asset based upon its actual usage and maintenance history.

625.45 Setting Performance Targets for Capital Assets

In accordance with the statutory mandate at 49 U.S.C. 5326(c)(2), this section proposed that transit providers establish quantifiable targets for each performance measure identified in § 625.43. FTA recognizes that in its determination of targets, a transit provider would need to consider a wide range of factors that may either constrain its ability to impact outcomes or may adversely impact outcomes (such as the population growth of an area). Transit providers should consider these factors along with the expected revenue sources from all sources in establishing targets and should explain in the annual report to FTA how the factors were addressed in setting their targets.

Under this section, the NPRM proposed group TAM plan sponsors to set one unified performance target for each asset class in the group TAM plan asset inventory. FTA recognizes that the condition of assets may vary significantly among group TAM plan participants. Therefore, each unified target should reflect the anticipated progress in asset performance for a fiscal year for the entire group. For example, group TAM plan participants are responsible for meeting a target. Thus, each transit provider's asset inventory and condition assessment results are combined to determine the unified targets in the group TAM plan.

The group TAM plan sponsor is responsible for coordinating development of the targets with participating transit providers' Accountable Executives, to the extent practicable. In addition, transit providers are required to coordinate with States and MPOs, to the maximum extent practicable, in the selection of State and MPO TAM performance targets to ensure consistency.

COMMENT: Performance Targets—Three-Month Deadline

Several commenters expressed concern about the 3-month deadline for target setting specified in § 625.45(a)(1). Some commenters generally requested more time to develop targets, some recommended revising the target-setting deadline to a minimum of 6-months, and others recommended that FTA allow a year to develop the targets. One transit operator recommended that the two-year implementation period for TAM plans should apply to all aspects of the plan, including the performance targets. A trade association said FTA should require the initial setting of targets six months after the completion of the first TAM and annually after that. A State DOT said the three-month target setting process may be sufficient for an individual TAM plan, but a group TAM plan may require more time to build consensus for the targets. Several commenters said until FTA promulgates prerequisite performance criteria and standards, the 3-month turn-around deadline cannot be expected to produce meaningful results.

Multiple commenters recommended a phased-in approach for target setting where the initial target setting (those due in three months) are classified as preliminary, with some commenters reasoning that targets set within three months will not be useful in guiding investment decisions. A State DOT said the rule should clarify that recipients and subrecipients will not be held accountable to the initial targets, but rather to the targets that are included in the more formalized asset management plans.

Several commenters argued that the establishment of performance targets for capital assets should not need to be accomplished prior to the development of the TAM plan. Most of these commenters said the TAM plan should direct the process and criteria for performance targets and, therefore, must be developed in conjunction with, or prior to, the development performance targets.

A few commenters requested that FTA publish the rule but set an effective date several months in the future (consistent with all other U.S. DOT performance rules). A transit operator asked if FTA would consider adjusting the target setting timeframe based on the size of the transit agency.

FTA'S RESPONSE: Performance Targets—Three-Month Deadline

Pursuant to 49 U.S.C. 5326(c)(2), recipients must set targets within 3 months after the effective date of a final rule to establish performance measures. In many cases, the effective date of a final rule is several months after the publication of the final rule, in which case a transit provider would actually have more than three months to establish performance targets. FTA believes that three months is sufficient time to complete initial target-setting. Sponsors are responsible for setting initial and subsequent targets for small and rural operators that are eligible to participate in a group TAM plan.

FTA recognizes the transit industry will be engaged in a learning process as it implements the principles and practices of transit asset management, including those requirements contained in this final rule. FTA understands that as transit providers gather more information, the initial targets will be revised and refined in successive rounds of target-setting. However, the purpose of the initial targets is to establish a performance baseline. That baseline will change as a provider matures in its practice of transit asset management.

FINAL RULE:

FTA is not making any changes to the final rule related to these comments.

COMMENTS: Performance Targets—Annual Performance Targets

Some commenters provided input on the requirement to set SGR performance targets annually, as specified in § 625.45(a)(2). Several commenters said the annual target setting should be limited to revisiting the prior year's target based on prior year investments and updating if significant changes are needed. These commenters said a full re-evaluation of targets should only be required every 4 to 8 years as determined by the provider (for an individual plan) or a sponsor (for a group plan).

However, these commenters suggested that new target setting should be done more frequently if a TAM plan is amended prior to the established full reevaluation deadline. A State transit association did not support progressive SGR targets, unless they can be tied to increased levels of funding. A transit operator stated that requiring SGR performance targets to be set each year does not fit with generally accepted methods for developing multi-year capital programs.

FTA'S RESPONSE: Performance Targets—Annual Performance Targets

49 U.S.C. 5326 requires recipients of FTA funding to establish performance targets annually. The proposed rule did not prescribe a process for how a transit provider would establish a target, however. A transit provider may establish performance targets by updating the prior year's target based on the prior year's investment, or by another approach.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

COMMENTS: Performance Targets—Realistic Expectations

Several commenters provided input on the requirement that an SGR performance target must be set based on realistic expectations, as specified in § 625.45(a)(4). Several commenters requested clarification of the term "realistic expectations." Multiple commenters recommended that FTA specify in that an "SGR performance target must be set on realistic expectations, which could mean that targets are set based on managing a decline in asset condition," rather than just improving or maintaining conditions as proposed. A commenter said this requirement is prescriptive and not required as part of the MAP–21 legislation.

One of the State DOT requested that § 625.45(a)(4) be revised to read, "An SGR performance target must be set on realistic expectations, which could require that targets be established to manage a decline in asset condition."

FTA'S RESPONSE: Performance Targets—Realistic Expectations

Each transit provider should be setting its performance targets in consideration of the condition of its assets and the funding that it anticipates will be available to it from all available resources. For example, if 30 percent of a transit providers buses are beyond their useful life benchmark, it is not realistic for that provider to set a target of 100 percent to bring all of its buses under the ULB, if it will likely only have funding to renew a portion of those buses through either major life enhancing rehabilitation or replacement.

FTA understands that there may be instances where a transit provider may choose to set a negative target. A negative target would indicate a declining asset condition; the target itself is not a negative value, but represents a lack of improvement. For example, a transit provider with a fleet of 100 busses, 15 of which are beyond the default ULB, the current metric for their rolling stock performance measure: Bus metric is equal to 15 percent. If the provider plans to replace 3 vehicles and overhaul 2 in the next fiscal year its projected bus metric would be 10 percent-the target for the performance measure rolling stock, asset class: Bus. If 10 of the busses exceed the ULB this fiscal year, the current year metric is the same at 15 percent, but the projected bus metric is now 20 percent, which indicates a declining asset condition (older vehicle fleet) and a negative target. In this example, for rolling stock, asset class: Bus, a target of 20 percent represents a negative improvement over a target of 10 percent.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

COMMENTS: Performance Targets—Recent Data and Available Resources

Several commenters addressed the requirement in § 625.45(a)(5) to base the SGR target on recent data and available financial resources. A couple of commenters expressed concern that transit providers may unilaterally identify competitive (or flexed) financial resources and thus could potentially over-count available resources at the regional level. One commenter said this requires a financial measure, rather than a performance measure. The commenter said the definition of SGR as proposed is not compatible with this statement.

FTA'S RESPONSE: Performance Targets—Recent Data and Available Resources

In the NPRM, FTA proposed that a transit provider set performance targets based on recent data and resources that the provider could reasonably anticipate would be available. This final rule does not prescribe a method for setting performance targets and FTA understands that target-setting is not an exact science. However, FTA believes that the most accurate targets can be established based on recent data and reasonably anticipated funding. FTA understands that effective target-setting and effective development of investment prioritizations will require coordination and communication among funding partners and stakeholders to produce the best results.

FINAL RULE:

FTA is not making revisions to the final rule related to these comments.

COMMENTS: Performance Targets—Other Comments

A State DOT supported FTA's proposed requirement that performance targets be set for each asset class, as specified in § 625.45(a)(3). A transit operator agreed that agencies should have the ability to set their own performance targets, asserting that this would result in targets that are more aligned with each operating environment.

Asserting that the empirical basis for believing that TAM improves efficiency of transit operations is very limited, one commenter suggested that because the proposed National TAM System includes explicit blocks on funding decisions being tied directly to performance metrics, transit agencies may have little incentive to actually set or achieve a reasonable target.

FTA'S RESPONSE: Performance Targets—Other Comments

FTA does not have the authority to award or penalize a transit provider for achieving or missing a target. However, FTA encourages transit providers to be aggressive about setting targets, both to support making the case for additional funds to meet state of good repair goals, and to encourage finding innovative methods for using existing funding levels to meet state of good repair goals.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

COMMENTS: Performance Targets—Role of Accountable Executive

A transit operator asked if the Accountable Executive would be required to establish and approve each SGR performance target for the subrecipients.

FTA'S RESPONSE: Performance Targets—Role of Accountable Executive

The Accountable Executive for a transit provider that develops an individual TAM plan must approve the provider's performance targets. If a transit operator is also a group TAM plan sponsor, it must establish performance targets for the plan participants in coordination with each participant's Accountable Executive. In its responses to the comments regarding the definition of Accountable Executive, above, FTA clarified that a group TAM plan sponsor is not the Accountable Executive for each participating transit provider. However, by participating in a group TAM plan, a transit provider's Accountable Executive may be required to defer to the decisions of the sponsor regarding prioritization of investments.

FINAL RULE:

FTA is not making any changes to the final rule related to these comments.

COMMENTS: Performance Targets—Setting Targets for Participants

Some public comments addressed the requirement for setting targets for group plan participants in § 625.45(c). Several commenters said the rule should clarify that the plan sponsor for a group plan may establish targets and investment prioritization across the entire group (*i.e.,* for all members of the group).

However, several commenters expressed concern that setting a single SGR target at the asset class level would not be useful. An MPO recommended that FTA devise a methodology that recognizes the array of operations and provides a means for setting meaningful performance targets within the group. Similarly, another MPO recommended that within a group plan that multiple performance targets be set depending on a transit agencies size, service type and service levels. A State DOT said setting a single target could be difficult if a group TAM includes rural and smaller urban transit providers from across the State, which may operate within quite different geographic and local conditions.

FTA'S RESPONSE: Performance Targets—Setting Targets for Participants

The sponsor is responsible for setting unified performance targets for plan participants based on the investment priorities established in the group TAM plan. FTA believes that target-setting approaches and methodologies are local decisions. The sponsor should coordinate with plan participants to develop an approach for setting unified targets. FTA agrees that it may be difficult to set a unified target for both rural and urban providers. This final rule does not prohibit a sponsor from establishing separate group plans and targets for its subrecipients under the urban and rural formula programs.

FINAL RULE:

FTA is revising the final rule to clarify that a sponsor must set one unified target per asset class, but may set more.

COMMENT: Performance Targets—Coordination

Some public comments provided input on the requirement in § 625.45(d) to coordinate with States and MPOs in the selection of performance targets.

Several commenters requested clarification regarding the role of the State and MPOs in target setting. Some commenters requested general guidance on how States and MPOs would be responsible for the targets being set or achieved. Some commenters sought clarification on the distinction between performance targets set at the State and MPO level and those established by the transit agencies themselves. A transit operator said it is unclear how transit agencies will report TAM plans and updates to MPOs and States, and it is also unclear how the State and MPO performance targets will impact individual transit agency TAM plans and performance goals.

A couple of commenters requested confirmation that the MPO would aggregate targets and measures, prioritization, performance and condition information from the local transit agency in order to set regional measure and targets. A transit operator said FTA should ensure that this section is not interpreted as giving MPOs mandate for developing parallel standards or targets that agencies must meet in addition to what is required by FTA. A State transit association supported the peer recommendation that FTA should not require MPOs to set a region-wide target or incorporate both the safety and transit SGR targets from each transit system within their jurisdictions into the performance-based planning process

A State DOT agreed that coordination with regional planning organizations supports the goals of effective transit asset management, but said the State should have the flexibility to develop the appropriate processes to achieve this coordination. However, a transit operator said there should be no requirements for agencies that are not State-funded to involve State agencies in target setting, project prioritization, or strategic leveraging of resources.

An MPO said that the requirement for coordination with the MPO should be strengthened by deleting "to the maximum extent practicable." However, a couple of commenters expressed concern that the rule indicates significant additional work will be required of MPOs and all transit-related partners that may produce speculative results with few tangible benefits. A transit operator said FTA should clarify whether the coordination suggested with the MPO is required for asset management or for service performance.

FTA'S RESPONSE: Performance Targets—Coordination

Pursuant to the requirements at 49 U.S.C. 5303 and 5304, States and MPOs must coordinate with transit providers to the maximum extent practicable in selecting State and MPO TAM performance targets.[13] The performance targets set by transit providers, along with other performance targets set pursuant to other statutes, are an essential component of the planning process. The planning provisions at 49 U.S.C. 5303 and 5304 require States and MPOs to establish performance targets for transit that are based on the national measures for state of good repair and safety established by FTA and to coordinate the selection of those performance targets, to the maximum extent practicable, with performance targets set by transit providers to ensure consistency. See, specifically, 49 U.S.C. 5303(h)(2)(B)(ii), 5304(d)(2)(B)(ii).

This final rule does not require a transit provider to coordinate with its planning partners in the selection of its own performance targets. The rule requires transit providers to coordinate with States and MPOs in the selection of State and MPO performance targets. However, FTA would strongly encourage transit providers, States, and MPOs to coordinate in the establishment of meaningful, progressive local and regional targets.

FTA believes that target-setting approaches and methodologies are local decisions. Transit providers should work with their planning partners to integrate their TAM plans into the statewide and metropolitan transportation planning processes. *See* 49 U.S.C. 5303(h)(2)(D), 5304(d)(2)(B)(ii). To support this integration, transit providers must share information regarding transit system condition, targets, investment priorities and strategies, which are parts of its TAM plan, in accordance with § 625.53(b).

The final rule on Metropolitan and Statewide Planning and Non Metropolitan published May 27, 2016 [14] FTA and FHWA issued e guidance to aid the industry in the implementation of the performance-based planning requirements.

FINAL RULE:

FTA is not making any substantive changes to the final rule related to these comments.

COMMENTS: Performance Targets—Setting Performance Targets

Some public comments provided other comments on performance target setting that were not otherwise addressed above. A couple of commenters said additional guidance is needed from FTA to ensure consistent calculation and application of targets.

A couple of commenters recommended that facilities be exempted from target setting until training is provided on the use of TERM for the State DOT and its subrecipients. Specifically, commenters recommended that facilities be included in a TAM plan a year after the training has been provided in the region.

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[13] *See* 49 U.S.C. 5303(h)(2)(B)(ii), 49 U.S.C. 5304(d)(2)(B)(ii).

[14] *https://www.federalregister.gov/articles/2016/05/27/2016-11964/statewide-and-nonmetropolitan-transportation-planning-metropolitan-transportation-planning.*

An MPO said the use of the term "transit provider" in this section is inconsistent with the use of tier I and tier II providers in the previous sections. The commenter said it is not intended that the TIP projects be constantly updated to make minor changes to projects that do not represent TIP amendments.

One commenter noted that the preamble states that performance targets are required "for each performance measure identified in § 625.43." If this is the expectation, the commenter said this should be made clearer within the language of § 625.45.

A transit operator said FTA should clarify that having and meeting performance targets set at 100 percent is not a prerequisite to meeting the state of good repair standard under § 625.41. Without this clarification, the commenter said some transit agencies may be led to believe only agencies meeting 100 percent performance targets have assets in a state of good repair.

A transit operator said agencies need to have flexibility to determine performance targets and how best to establish their definition of a state of good repair. Another transit operator asked to what extent will reviewers during the triennial review process be empowered to reject these targets, and if a transit agency has self-certified its TAM plan, to what extent will the reviewers be empowered to reject the certification if they believe it does not meet the standards.

A transit operator said the NPRM includes discussion about the lack of authority for FTA to reward or penalize transit agencies whether or not they meet SGR performance targets. The commenter expressed concern that there is a reasonable expectation that funding, through FTA, MPOs, or States, may in the future be directed to performance areas where transit agencies fell short of SGR performance targets.

FTA'S RESPONSE: Performance Targets—Setting Performance Targets

FTA is preparing two guidebooks to aid in the calculation and application of the Facility and Infrastructure performance measures. The National Transit Institute offers training on TERM-Lite.[15]

FTA disagrees that the term transit provider is inconsistent with the definition of tier I and tier II.

FINAL RULE:

FTA is not making any substantive changes to the final rule related to these comments.

625.53 Recordkeeping for Transit Asset Management

This section proposed that a transit provider keep records of the documents it develops to meet the requirements of this part for at least four years. Excel spreadsheets, agreements, or policies that were used to develop a TAM plan may prove useful in the next iteration, as well as assist in certification and review. This section proposed also that a transit provider or group TAM sponsor share its records with its State and MPO to aid in the planning process.

COMMENTS: 625.53 Recordkeeping for Transit Asset Management

Some public comments addressed the proposed recordkeeping requirements in § 625.53. A few commenters expressed support for proposed § 625.53.

One commenter stated that the information in proposed § 625.53(b) is public and readily shared with partners, including MPOs and, therefore, unnecessary to include in the rule. A transit operator recommended that tier I agencies only be required to share performance targets and progress with States and MPOs. Another transit operator said the documentation required to be provided to States and MPOs should be limited as such agencies may not provide funding to the transit agency.

Expressing concern that the use of supporting records by the MPO would increase the staff burden for some MPOs, a transit operator recommended that FTA revise § 625.53 to only say that the grantee should use its TAM plan to inform its proposal of projects to the MPO for inclusion in the TIP.

A business association expressed support for State-level maintenance of records and documents for tier II TAM group plans along with NTD data, as it would lessen the administrative burdens on smaller systems.

FTA'S RESPONSE: 625.53 Recordkeeping for Transit Asset Management

Through the enactment of MAP–21 in 2012, the Congress fundamentally shifted the focus of Federal investment in transit to emphasize the need to maintain, rehabilitate, and replace existing transit investments. The ability of FTA grant recipients, along with States and MPOs, to both set meaningful transit SGR performance targets and to achieve those targets is critically dependent upon the ability of all parties to work together to prioritize the funding of SGR projects from existing funding sources. In order to work together, all parties, including tier II providers, must share information openly.

This final rule requires that a transit provider or group TAM sponsor make its TAM plan and supporting documents available to a State or MPO that provides funding to a transit provider. It will be up to the State or MPO to prescribe how it wants to receive the information.

FINAL RULE:

FTA has revised this section in the final rule to clarify that a transit provider must make its TAM plan available to a State or MPO that provides funding to it.

625.55 Annual Reporting for Transit Asset Management

This section proposed a description of the annual report a transit provider or group TAM plan sponsor would have to submit to NTD. The annual report would include a data report and a narrative report. The data report would need to include performance targets for the next fiscal year and the condition of the system, at minimum. In the case of a group TAM plan, the report would need to include the uniform performance targets and the condition of the amalgamated system. The narrative report would include a description of the change in condition of the transit system, and the progress toward achieving the performance targets set for the previous fiscal year. A report for group TAM plan participants should include the amalgamated system and progress toward the uniform performance targets.

Both reports would allow FTA to customize triennial reviews to the transit provider. In addition, the data will be used by FTA to estimate and predict the national SGR backlog and the default ULB for rolling stock assets.

COMMENT: 625.55 Annual Reporting for Transit Asset Management

Many public comments addressed the proposed annual NTD reporting required by a transit provider or a group TAM plan sponsor in § 625.55.

A State transit association supported the peer recommendation that FTA should build upon the existing NTD Safety Event Reporting data collection effort and leverage historical data collection to identify safety trends, rather than establishing a new data collection and reporting system. Similarly, a transit operator expressed support for using the NTD to submit the annual data reports, performance target reporting, narrative changes in the condition of the transit system, and progress to meet SGR targets. Two State DOTs and other commenters urged FTA to keep the amount of reporting and target setting to a minimum of only what is required for the NTD.

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[15] National Transit Institute (NTI) *Using the Transit Economic Requirements Model (TERM-Lite) Computer Lab* (*http://www.ntionline.com/courses/courseinfo.php?id=271.*)

A transit operator asked why the data report and the narrative report would not be due at the same time covering the same year. Another transit operator recommended that the deadline for the annual NTD data and narrative reports should be four months after the Federal Fiscal Year (FY) for the data report and six months after for the narrative report, asserting that four months after the end of the standard FY in June would be too short for agencies to collect necessary data and conduct analysis. A few commenters urged FTA to sync up NTD reporting and target setting with TAM plan reporting and target setting, as well as FHWA reporting cycles. A business association urged FTA to allow agencies to report asset condition consistently with their established internal asset management practices, reasoning that forcing agencies to report in what would normally be off years would be expensive and disruptive to agencies, without adding quality to the national view obtained by FTA.

A State agency suggested that rail fixed guideway transit systems be required to provide the annual data report and annual narrative report to State Safety Oversight Agencies (SSOAs) simultaneously with their delivery to FTA.

Several commenters expressed concern about the data collection resources that would be needed for transit providers to assess and submit performance conditions for all assets annually. A State DOT commented that requiring both annual data and narrative reports describing any changes and requiring TAM plan reassessment every four years is onerous and burdensome. A transit operator stated that annual reporting and annual target setting may be excessive and labor intensive since their own experience indicates that there are not significant changes over the course of a year. A transit operator stated asserted that annual reporting did not make "good business sense" from a risk perspective of a transit agency and that the volume of data in the annual assessment would overwhelm the database system.

Absent a change in funding or an unanticipated change in assets condition, an MPO commented that it would be more appropriate to report the SGR targets on a consistent basis with changes in the targets set as part of a new TIP/STIP development every four years.

A transit operator commented that it is difficult to comment on proposed reporting requirements without reviewing the forthcoming guidance proposal on the NTD Reporting Manual that would describe the content of the new data report. This commenter recommended that the final rule should include more guidance on the new reporting requirements and that FTA provide a template for the new data and narrative report requirements for NTD.

A local transit provider asked if service providers would have to report SGR for each asset in their inventory or whether this would be done at a higher, aggregated asset category level. This commenter also expressed concern about proposed Appendix A to part 625, asserting that FTA should endorse the TERM asset hierarchy throughout the rulemaking rather than changing to a different classification hierarchy.

Commenting that the NPRM did not provide guidance on the level of reporting that would be required when submitting NTD required reports, a State public transportation system urged FTA to ensure that the transit provider determine the level of detail in its asset inventory and that the NTD input requirements are structured so that the providers could have one database that could feed both NTD and asset management reporting requirements.

An MPO urged FTA to acknowledge in the final rule that it needs to expand the NTD to accommodate the additional reporting and that the scheme for reporting this data has not yet been developed. This commenter suggested that FTA should have a public comment request for its proposal to amend the NTD. A State DOT suggested that because the rule would require annual reporting of asset condition using the NTD, the NTD should include a function that automatically compares a currently reported condition to the most recent previously reported condition in order to meet the requirement for assessing the change in asset condition at § 625.55. The commenter reasoned that this function would help smaller agencies, which typically do not have staff resources to evaluate and document changes in asset condition.

A transit operator said capital asset inventories should be afforded the protections of Federal laws prohibiting the public disclosure of sensitive information. Similarly, two other operators said FTA should safeguard sensitive information related to condition and risk, stating that any compromise of data is almost certain to limit any agency's motivation to fully embrace this strong self-analysis. A transit operator asked to what extent assembled data could be protected from discovery in litigation or disclosure through the Freedom of Information Act (FOIA).

A State DOT recommended that the reporting requirement should be for a single annual report that includes both the asset condition report and performance target progress and milestones, rather than requiring both separately.

Two commenters noted that, although it seems like a good practice, the proposed rule would not require an agency to report the percentage of assets in SGR or the SGR backlog amount. A State DOT asked FTA to clarify whether annual reporting to NTD will be required for transit agencies receiving 49 U.S.C. 5307 funds. Another transit operator asked several detailed technical questions about the mechanics of National Transit Database Reporting.

FTA'S RESPONSE: 625.55 Annual Reporting for Transit Asset Management

The NPRM proposed that a transit provider submit two annual reports to the NTD. The reporting requirements for TAM do not conflict other NTD reporting requirements.

FTA did not propose that SSOAs review and approve TAM plans. However, a rail transit system may coordinate and collaborate with its SSOA to develop and carry out its TAM plan.

FTA believes the reporting and target setting requirements in this final rule are appropriate. FTA recognizes that for many transit providers there will be minimal changes to the asset inventory and condition information reported to the NTD from year to year. The online reporting system of the NTD will pre-populate asset inventory and condition information from the previous year, thus minimizing the annual reporting burden on transit providers when there are few changes. Interested parties can consult the existing NTD Reporting Manuals for technical questions about the logistics of NTD reporting.

The NTD data report will not include an exhaustive inventory of all of a provider's assets, nor an exhaustive deposit of all its condition information available. Transit providers can organize the asset inventory and condition assessment in their own TAM plan according to any asset hierarchy that still allows them to meet the relevant NTD reporting requirements.

FTA recognizes that the annual change in targets may be minimal. A transit provider may report targets that are either identical, or only incrementally different from the targets it reported in the previous year. If there is little change from one year to the next, then a transit provider may have the same numerical target for more than one year. In addition, a transit provider may decide to set a longer range target and divide it incrementally to report as annual targets.

FTA does not have the statutory authority to exempt the reports required under the final rule from the Freedom of Information Act (FOIA).

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

Part 630—National Transit Database

FTA proposed to revise §§ 630.3, 630.4, and 630.5 of subpart A of 49 CFR part 630 to conform to the reporting requirements set forth in proposed part 625. The proposed reporting requirements for National TAM System apply to all chapter 53 recipients or subrecipients who own, operate, or manage public transportation capital assets. FTA's National Transit Database (NTD) currently requires reports from recipients or beneficiaries of the Urbanized Area Formula Program (49 U.S.C. 5307) and the Rural Area Formula Program (49 U.S.C. 5311). FTA proposed to replace references to 49 U.S.C. 5307 and 5311 recipients with references to recipients and subrecipients of chapter 53 funds. This change will require recipients and subrecipients of other FTA grant programs, such as the 49 U.S.C. 5310 formula program for the enhanced mobility of seniors and individuals with disabilities who are not also receiving funds under 49 U.S.C. 5307 or 5311, to start reporting TAM required performance data to the NTD. FTA will not apply existing NTD reporting requirements to all recipients of chapter 53 funds. FTA will only apply the reporting requirements proposed under the National TAM System to those transit providers that do not currently report.

COMMENT:

A couple commenters expressed support for FTA's proposed changes to the NTD regulations at 49 CFR part 630.

FTA'S RESPONSE:

FTA appreciates the comments in support of its proposed amendments to the NTD.

On November 8, 2015, FTA published a notice in the **Federal Register** which responded to comments on a previous proposed expansion of the NTD; requested comments on additional proposed reporting; and requested comments on updating the NTD's approval to collect information under the Paperwork Reduction Act. 80 FR 72137. Some of the proposed reporting requirements in that notice relate to the contents of this rule. The comment period for the notice on NTD reporting closed on January 19, 2016 comments relevant to this final rule made to the docket for NTD reporting requirements are summarized below. The complete list of comments and responses including burden estimates can be found in the NTD Reporting Manual **Federal Register** notice.

NTD Reporting Manual Background

The proposed changes to the NTD Reporting Manual stem from amendments to Federal transit law made by the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, July 6, 2012), which require recipients of Chapter 53 funds to report to the NTD any information relating to a transit asset inventory of condition assessment conducted by the recipient. (59 U.S.C. 5335(c)) Currently, the NTD only collects asset inventory information on revenue vehicles and summary counts for other asset categories, such as maintenance facilities and fixed guideway. There are some assets, such as signal or communications systems, for which NTD collects no data. In both the initial and second notice, FTA proposed to collect additional asset inventory data to meet the asset inventory and condition reporting requirements at 49 U.S.C. 5335(c).

Comments Relevant to National TAM System Final Rule From the NTD Reporting Manual Notice Docket

FTA received comments related to 1- Asset inventory burden, 2- Reporting requirements for 5310 recipients, 3- Reporting of service equipment, and 4- Guidance for useful life benchmark (ULB). In addition, the NTD Reporting Manual notice received duplicative comments to those addressed in this final rule on third party asset reporting and dollar thresholds for asset inventory. FTAs responses to the duplicative comments are addressed previously in this final rule.

NTD Notice Comments: Asset Inventory Burden

FTA received a number of comments expressing concern over the additional burden imposed by expanding the asset inventory. Twenty (20) commenters stated that the proposal was too burdensome. Thirteen (13) commenters expressed the concern that the additional reporting burden may divert resources away from transit service provision. Eight (8) commenters felt the burden estimates provided by FTA were 'understated'.

FTA's Response: Asset Inventory Burden

The NTD burden estimate, which will be more fully described in the separate **Federal Register** Notice responding to comments on FTA seeking approval under the Paperwork Reduction Act for updated NTD Reporting Manual guidance, assumes that an agency will already have an asset inventory in place as part of their compliance with the TAM rule and, therefore, only includes the time and costs estimated to enter existing asset inventory information into the NTD reporting system. In some cases, modifications to existing data may be necessary to enter this information into the NTD. The burden estimates provided in the second NTD notice take into account small modifications of existing information in the asset inventories required by the TAM Rule for reporting in the standard formats established by the NTD.

In calculating the burden estimate for NTD reporting, FTA asked several agencies to enter their existing asset inventory information into the proposed format and report the time necessary to complete this task. Three agencies completed an entire report and their experience with the new reporting requirements served as the foundation for the final estimates. A 'per field' reporting time was calculated and then multiplied out over the estimated data fields expected nationally to create a final burden estimate. Because the numbers presented are averages, some agencies may expect to spend more time and some agencies will spend considerably less than the estimated average.

FTA remains committed to implementing reasonable data reporting requirements, while also meeting the requirements in the law for reporting asset condition information. In response to the first round of comments on the asset inventory, FTA made several modifications to reduce the overall reporting burden including removing replacement cost information for all asset types and also eliminating the proposal for reporting details of individual components within facilities. FTA believes that this revised proposal for asset inventory reporting fulfills the MAP–21 update to 49 U.S.C. 4335(c) that recipients report asset inventory and condition assessment information to the NTD. These data will support better state of good repair estimates from

FTA's Transit Equipment Requirements Model and will support the calculation of performance results under the performance measures established in this rule. While FTA recognizes that the proposed changes would result in an increase over the current reporting requirements, the highest burden would exist in the first year of start-up reporting. Once an asset has been entered into the inventory module, the information would be pre-populated for each subsequent year. Reporters only would be responsible for providing annual updates to new or retired asset inventory items in subsequent years.

NTD Notice Comments: Reporting Requirements for 5310 Recipients

An additional area of concern was related to the new reporting requirements for 5310 recipients. Commenters stated that reporting for 5310 recipients should be limited or eliminated entirely. In addition, commenters felt that any reporting done on behalf of 5310 recipients should be done at the designated recipient level rather than the subrecipient level to minimize the burden of this new reporting. This same group of commenters suggested that only vehicles used in public transit and, preferably only vehicles purchased with federal money, should be reported. Some commenters requested that performance targets and reporting should be removed for 5310 recipients.

FTA's Response: Reporting Requirements for 5310 Recipients

FTA is committed to developing requirements that are mindful of the burden for small transit providers. FTA understands that direct reporting may prove to be a difficulty for small section 5310 recipients. In order to minimize this burden, FTA concurs with the comment that reporting on the assets for 5310 recipients should be done at the designated recipient or State level. The reporting guidance will be updated to reflect this change.

In response to the applicability of reporting for 5310 reporters: the NTD asset inventory requirements will mirror the reporting requirements established by the Transit Asset Management rule. The final reporting requirements for National TAM System apply to all chapter 53 recipients or subrecipients who own, operate, or manage public transportation capital assets. FTA currently requires NTD reports from recipients of funds under the Urbanized Area Formula Program (49 U.S.C. 5307) and the Rural Area Formula Program (49 U.S.C. 5311). As such, this new rule replaces references to 49 U.S.C. 5307 and 5311 recipients with references to recipients and subrecipients of chapter 53 funds. This change will require recipients and subrecipients of other FTA grant programs, such as the 49 U.S.C. 5310 formula program for the enhanced mobility of seniors and individuals with disabilities, who are not also receiving funds under 49 U.S.C. 5307 or 5311, to start reporting to the NTD. FTA will not apply existing NTD reporting requirements to all recipients of chapter 53 funds. FTA will apply only the reporting requirements mandated under the National TAM System final rule to those transit providers that do not currently report.

NTD Notice Comments: Reporting of Service Equipment

Some commenters requested the removal of service equipment from the NTD Asset Inventory.

FTA's Response: Reporting of Service Equipment

In order to best align the NTD asset inventory with the TAM rule reporting requirements, FTA believes it is appropriate to keep an inventory of 'service equipment' in the NTD. This information will provide verification of the TAM performance targets and performance against those targets. In addition, non-service vehicles and equipment represent a large capital expense for some agencies. Including a basic inventory of these vehicles and equipment in the NTD will provide additional clarity on the state of good repair backlog for the transit industry.

The final TAM rule requires transit providers to report the percentage of on non-revenue, support-service and maintenance vehicles that have met or exceeded their useful life benchmark. This is the identified SGR performance measure for equipment. FTA feels that non-service vehicles are an easily understood and readily identifiable category of equipment, and the age-based performance measure is the most-simple and straight-forward performance measure available.

NTD Notice Comment: Guidance for Useful Life Benchmark (ULB)

One commenter requested guidance on calculating a useful life benchmark (ULB) that is not based on accounting depreciation standards.

FTA's Response: Guidance for Useful Life Benchmark (ULB)

The calculation of a useful life benchmark may vary considerably between transit operators based on original equipment specifications, operating environment and maintenance or capital replacement schedules. Due to these variations, the FTA intends to leave the calculation of such a metric up to the individual providers. To facilitate reporting, FTA will provide a ULB default estimate based on the Transit Economic Requirements Model (TERM) depreciation curves in the NTD reporting system. These default estimates will also be available in the reporting manual. The ULB default estimate provided by NTD will be the point at which a vehicle reaches 2.5 in TERM.

FINAL RULE:

FTA is including the proposed amendments to the NTD in the final rule without change.

III. Regulatory Analyses and Notices

A. Regulatory Analyses and Notices NPRM Comments and FTA's Responses

COMMENTS: Funding for Transit Asset Management

A transit operator argued that because the TAM rule requirements will come with significant costs, there should be a dedicated funding source that does not diminish other programs. A business association similarly expressed concerns that the current investment from government is insufficient to meet both the capital and operating needs of the nation's mobility providers and is unlikely to change in the foreseeable future.

After expressing concern about the increased resources that would be required to comply with the rule, several commenters requested that funding be allocated to assist transit providers in developing and implementing TAM. A transit agency said dedicated funding should be made available with specific eligibility for TAM business processes needed to comply with the rulemaking requirements that does not include competing eligibilities with capital replacement projects. A transit operator requested that FTA identify a source of funding, in addition to formula funding, to help agencies comply with this new mandate. A State DOT said it is unclear if FTA will provide financial support for training of maintenance and reporting agency staff and for purchasing software to manage TAM systems. A transit operator requested clarification on how a service provider can request funding under specific grant programs.

A State transit association noted that the NPRM stated that "on average, fare revenue cover only one-third of total operating expenses, and do not cover any capital expenses," but there is no discussion about the systems that do not charge fares, thus allowing them to qualify for more Federal funding than the systems charging fares. The commenter said FTA should consider allowing at least 10 percent of fare collection to be set aside for capital purchases or major repairs as local match. The commenter asserted that this would result in an incentive to agencies to seek user financial support in achieving SGR goals.

Several commenters said FTA should recognize the lack of funding available to assure state of good repair. An MPO said it is not appropriate to place the burden of SGR on the transit operators' management practices when Congress has stepped away from the traditional partnership role in funding transit capital needs. Another commenter asked if national and local funding prioritization will be in alignment with SGR targets, as the Secretary is required to establish SGR performance measures and recipients are required to set performance targets based on these measures. This commenter also asked what portions of funding would the FTA consider reasonable to be allocated to achieving these targets and what level of confidence needs to be established that funding of projects will impact measures in reaching targets. A State DOT encouraged FTA to make the case for dedicated Federal funding for the TAM plan initiative, and/or consider clarifying which existing Chapter 53 planning and technical assistance funds may be applied to TAM plan development.

FTA'S RESPONSE: Funding for Transit Asset Management

In its 2013 Conditions and Performance Report, FTA estimated that the Nation's SGR backlog is $85.9 billion. FTA recognizes that addressing this backlog will require multiple approaches, including increased funding for asset management activities and state of good repair projects. However, FTA does believe that the National TAM System will support the transit provider's strategic allocation of available funds towards reducing the SGR backlog. FTA grant recipients, along with States and Metropolitan Planning Organizations (MPOs) will need to coordinate in order to set meaningful SGR targets and to prioritize funding from all sources towards reducing the SGR backlog.

There is specific funding available for transit asset management and state of good repair purposes. In MAP–21, Congress created the State of Good Repair Formula Program at 49 U.S.C. 5337. Funding for the SGR Program was reauthorized in the FAST Act at approximately $2.5 billion for fiscal years 2016–2020, a significant increase over MAP–21's authorized funding levels. Eligible projects include TAM plan development and implementation, and Capital projects to maintain a system in a state of good repair. Upon the effective date of this final rule, projects eligible for funding under the SGR Formula Program must be identified within the investment prioritization of a transit provider's TAM plan.[16]

Funds from other FTA grant programs may also be used to cover costs related to TAM plans. In general, costs associated with capital projects to purchase new capital assets or to rehabilitate or maintain existing assets are available for state of good repair purposes. The software costs for an asset inventory system, for estimating capital investment needs over time, or for a decision support tool for investment prioritization are all eligible capital costs. Costs related to assembling and maintaining an asset inventory, or related to condition inspections, are generally eligible preventive maintenance costs that can be funded by capital assistance. Finally, costs related to creating a TAM plan itself are an eligible expense under the section 5307 Urbanized Area Formula Program and the section 5311 Rural Area Formula Program.

Although fare revenues that are program income are not currently an eligible source of local match for FTA's grant programs, FTA does not have the statutory authority under current law to change this approach. Whether or not a transit provider charges a fare does not impact the amount of funding it may receive from FTA.

COMMENTS: Other Funding for TAM

An MPO said more recordkeeping without additional funding accomplishes nothing other than demonstrate the unmet need. This commenter asserted that a systematic approach to manage existing resources will not fully address the financial need to replace assets. Another commenter suggested that while the TAM rule may provide data and systemization for agencies as they assess their SGR, it is unclear if this will result in a better funding outlook.

One commenter expressed concern that requiring service providers to publicly document asset safety shortcomings while possibly not having sufficient funding to address all needs would increase legal liability risk for agencies.

A State transit association suggested that FTA (1) consider setting guidance to allow for local agencies to have fare set-asides to establish "sinking funds" to pay for new rolling stock purchases or major vehicle repairs, and (2) allow agencies be able to make loan payments from fares, reporting balance of fares less loan payments on quarterly DOT reports. A State DOT recommended that the rule should include specific language stating that, without additional financial resources, establishing an asset management plan may not in itself enable a provider or a group to reach a state of good repair.

Expressing concern that the rule would not allow legacy transit providers to work towards improvements in their facilities performance measure without diverting funds from other, potentially more critical needs, a local transit operator asked what the consequences would be of reporting declining performance measures for facilities to ensure maintaining or improving performance targets for fleet and infrastructure.

FTA'S RESPONSE: Other Funding for TAM

FTA believes recordkeeping and reporting will create a database that can be used to better identify the unmet needs. In many States, data-driven performance management practices have resulted in increased funding for transportation programs from state and local governments. Being able to demonstrate transportation needs, based on sound quantitative analysis, lends credibility to the funding requests and makes it easier for legislatures to support increased funding.

FTA acknowledges that the efficiencies realized through improved data-driven decision-making may not be adequate to meet all of the financial needs to address SGR, and that TAM plan development costs may divert funds from the current capital programs and that this may affect system performance. However, FTA anticipates that improved asset management practices will result in decisions that reduce maintenance and rehabilitation costs overtime. These cost savings might offset the costs of the TAM plan.

The TAM final rule does not include penalties for agencies that demonstrate declining performance of assets. The goal of the final rule is for transit service providers to develop or improve on existing asset management processes to provide and use data to make better decisions. Making trade-offs among competing investments is part of the process. A goal of the TAM plan is to help agencies improve their current asset management practices to better manage assets over the whole life of an asset and to identify what can be achieved with current funding in order to meet desired performance goals.

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[16] For more guidance on the SGR Formula Program, please review the program guidance available on FTA's Web site at *http://www.fta.dot.gov/legislation_law/12349_16262.html.*

This rule does not require agencies to list or document assets that pose an unacceptable safety risk.

FINAL RULE:

No change has been made in the final rule due to these comments.

COMMENTS: NPRM Regulatory Impact Analysis—Total Cost

Many comments were made on the costs associated with the proposed rule. Many commenters said FTA's estimated costs of compliance with the rule (coordination, data collection, reporting, etc.) are underestimated. One commenter said the rule's activities could require more than three times the number of hours estimated by FTA, and approximately five times the estimated cost. A State DOT said its current cost estimate for the initial phase of asset management planning (performance gap analysis) is about $300,000 in upfront costs, including project staff labor, training and consultant services for one year, which is significantly higher than the tier I annual cost of $33,451 per provider estimated by FTA. Some commenters provided specific estimated costs of complying with the rule, which ranged between $20,000 and $500,000 per transit agency. Another commenter stated that it uses two full-time equivalents (FTEs) just to update the asset inventory and the contracted costs for its recently completed TAM plan was three times the average cost from the FTA analysis for all TAM activities. Further, this commenter asserted that there would be further costs to bring it into compliance with the final rulemaking.

A transit operator said requiring all assets in the facilities category to have a full condition assessment with a 1–5 ranking based on the TERM scale would be extraordinarily expensive for larger agencies and may also be cost-prohibitive for smaller agencies with fewer assets and less funding. The commenter stated that, given the geographic breadth of the rail system and the number of stations, it would not be unrealistic to assume a $4–5 million undertaking to produce something of value. The commenter stated that because FTA has been supplied with the budget updates for this project on a monthly basis for several years, it was surprising that the estimates and approach did not reflect any of this information, but rather relied on the feedback from four newer and smaller agencies.

FTA'S RESPONSE: NPRM Regulatory Impact Analysis—Total Cost

FTA appreciates the comments on the cost estimates and the assumptions used. FTA acknowledges that the general consensus of the comments was that the estimated costs were lower than would be expected. FTA agrees that this may be the case in some instances for various reasons. However, it can be misleading to compare individual agency costs with an average for an industry that is very diverse in size, such that a few large agencies provide a large share of transit services. For example, among agencies receiving 5307 formula funds, 3 percent of the agencies own nearly 50 percent of the revenue vehicles. Since the average cost estimates in NPRM are the average cost per transit provider, they are more representative of the costs for the smaller providers, who are much more numerous, than for the large-medium to large providers. Thus, FTA agrees that costs for particular larger agencies may be higher, while, costs to smaller agencies may be lower, than the estimated average.

Tier I agencies range in size from agencies with revenue vehicles of over 101 to 10,000. Out of the 284 agencies in tier I, only twenty three have revenue vehicles greater than one thousand. As mentioned above, the average costs for tier I providers are more representative of the costs to the smaller tier I agencies. To illustrate this point, estimates are made for a large tier I agency, with 2500 vehicles and one with 500 vehicles. The quantified costs of implementing the rule are $234,477 for the larger agency and $109,312 for the smaller agency. The costs would approximately double if most of the tasks were contracted out.

However, for a more realistic comparison between the final rule's costs and the estimates cited by the commenters, FTA compared the costs for the specific agency providing the comment against the costs that would be predicted by FTA's model as used in the NPRM. For example, a State DOT commented that it has incurred $300,000 in upfront costs for asset management planning (performance gap analysis), significantly more than the average for tier I. FTA's cost estimate for this agency to implement the TAM rule is $99,000 in upfront costs. Many other agencies provided cost estimates ranging from $20,000 to $500,000. For these agencies, the NPRM upfront cost estimates ranged from $41,000 to $161,000. Another commenter noted that it could cost an agency between $4–5 million to undertake a full condition assessment based on TERM scales and other TAM requirements. For this agency the NPRM cost estimate is about $240,000 in upfront costs.

There are a number of reasons why the cost estimates in the NPRM are lower than the estimates provided by the commenters. First, the cost estimates in the NPRM were for the additional or incremental activities resulting from implementing the final rule. Adopting the requirements of the TAM rule will replace some existing practices and create new ones to better manage assets in a systematic way. In some instances, the TAM provisions may not add any new burden at all. Because the baseline compliance level is different across agencies, the final analysis does not estimate that every agency—or even every agency that is similar in size to the commenter's agency—will incur the same costs as identified by a particular commenter.

For instance, it is known that for the project with estimated costs of $4–5 million, a large component of the cost was for updating asset condition data that had been done previously using a new method. The cost estimate provided is therefore not an incremental cost of the rule. Also, it is noted elsewhere in this rule that FTA has not prescribed any specific condition assessment approaches or other analytical tools. So, if an organization decides to adopt an approach that is more expensive, it is their decision based on their need.

Second, the scope of the efforts for which commenters provided costs may be beyond what is required by this rule. For example, the document referenced by the State DOT commenter is referred to as 'performance gap analysis.' Performance management is generally more encompassing than asset management and particularly more than what is required in the TAM rule. Without additional information, it is hard to provide a realistic validation of these numbers.

Third, FTA acknowledges that its estimates are based on the data available in the NTD. It does not include all the assets owned or operated by an agency or even the ones required to be included in the TAM plan. Fourthly, FTA estimates assume the work is being done in-house with qualified staff available with the appropriate skills. This would result in significant underestimation if most of the work was contracted out. To address this issue the final rule includes a scenario for contracting out work tasks. The costs roughly double under this scenario. This is presented as an upper bound cost (high case) and in-house as a lower bound cost (low case). The estimates presented above are for the in-house scenario (low case).

FINAL RULE:

No changes were made to the rule based on these comments. However, in consideration of other comments summarized below, changes have been made to the assumptions upon which the costs are estimated. These changes include additional asset inventory costs; the presentation of a high-cost case that assumes contractor support; modified personnel category, update of wage rates and additional IT costs.

COMMENTS: Regulatory Impact Analysis—Specific Task Costs

A commenter said FTA has underestimated the amount of labor hours needed for the continuous tracking and annual reporting process, particularly in the areas of vehicles and facilities. A transit operator said FTA underestimated the effort required for tier I providers in keeping large asset management datasets useful and coordinated. The commenter said FTA's estimate of 80 hours every 4 years should be at least 4 times that amount, equating to 80 hours per year. A transit operator also commented that creating a prioritized project list would require more time both initially and on an ongoing basis to set criteria and score assets. A transit operator said an estimated 520 person-hours may be sufficient to update or enhance an existing decision support tool but not nearly enough for an agency that is implementing a new decision support tool. Several commenters said FTA should take into consideration that not all agencies have basic asset management software in place and, thus, will need additional time and resources to procure software. An individual commenter said software costs may be eligible for capital costs but the availability of capital costs are so limited that those funds are already allocated to the capital needs of the agency.

Several transit operators said it is not accurate to assume that a complete asset inventory (in the correct format) already exists as a baseline for every agency. These commenters explained that FTA's assumption that financial or property accounting systems may be used as asset inventories for TAM purposes is overstated. The commenters explained that the way this information is captured and reported would need to be modified to support TAM implementation and additional data elements would need to be collected. A transit operator said FTA's assumption that no incremental costs would result due to completion of asset inventories is not valid for commuter rail operators because currently only vehicle assets are included in the NTD report.

Another transit operator said using wage rates based on May 2013 Bureau of Labor Statistics data for urban transit systems significantly understates the cost associated with TAM implementation for services. A couple of commenters said FTA's average estimated cost for a tier I agency is understated. A State transit association said the assumption that an administrative support worker would develop the prioritized project list is probably incorrect. Similarly, a transit operator did not agree with the level of personnel that the FTA has assumed work on the prioritization of projects that is required of tier I providers. A medium to large size transit operator said the assumption of two staff members with the expertise necessary to assess the condition of all the equipment and subcomponents in one day seems optimistic.

A professional association and several State DOTs stated that the rule should take into consideration that transit agencies will likely be unable to implement the TAM requirements in-house, and would likely hire consultants. Similarly, several other commenters stated the rule would require transit agencies to add resources to comply with the new rules. A joint submission from several State DOTs said the regulations could divert scarce financial and personnel resources from investments that support transit service to regulatory compliance.

FTA'S RESPONSE: Regulatory Impact Analysis—Specific Task Costs

FTA agrees that existing inventory data may not be in the format required for the TAM provisions and may be dispersed in different databases. Therefore, additional costs for creating a single usable database are included in the final rule. Additional labor hours are added for the asset inventory task, which was previously assumed to be zero, to develop a TAM inventory database from disparate existing data systems. In response to comments received about employee responsibilities, FTA has also included costs for IT investments such as new software or other devices for recording information.

FTA agrees that some transit providers may use contract support versus in-house resources to develop their TAM plans and compliance. The final rule presents two sets of total costs, one assuming in-house plan development and another with contractor support. It is unknown what percentage of the plans would be in-house and what percent contracted out, so the cost of the rule is presented as a range. The results indicate the costs to contract development of the TAM plan are assumed to be double that of work performed in-house. FTA has updated the labor rates to use the latest year of data available in this final rule, which is the 2015 Bureau of Labor Statistics. In response to comments on the skill level of staff assumed for investment prioritization, FTA is using higher skilled personnel for the investment prioritization task in the final rule cost estimate.

FINAL RULE:

FTA made revisions to the Regulatory Impact Analysis and the Paperwork Reduction Act analysis of the final rule in response to these comments.

The following revisions are made to the final rule costs: The number of hours for asset inventory task is increased by 96 hours for the first 2 years and 36 hours thereafter for both tier I and tier II agencies; an additional cost of $5,000 per plan is now included for information technology to support TAM plan development; and the wage rate for the analytical processes and project prioritization task for tier II providers is increased from $23.04 to $41.98 to address the low personnel skill level comment. The average wage rate for the staff categories used in this rule has increased by about 2% on average since 2013, and costs estimates have been adjusted to account for the changes in wages in the final rule.

COMMENTS: Regulatory Impact Analysis—Other Assumptions

Regarding FTA's assumptions used for quantifying costs and benefits, a State DOT asserted that, while theory suggests best practices may yield cost benefits if employed, until the final rules are published, the cost and benefits will be unknown. Several commenters suggested that another non-quantifiable cost will be the time dedicated by managers who will need to attend asset management meetings as part of the coordination efforts throughout the year. Additionally, several commenters asserted that mechanics will need to be trained, which will improve efficiency for the agency, but will affect operating expenses. Another commenter stated that closer scrutiny should result in cost saving benefits but may require more staff time/resources in order to implement the plan. Therefore, the commenter said any cost savings may be offset by a better state of good repair and less down time.

Several commenters responded about additional costs for States and MPOs in target setting beyond the coordination costs included in the planning rule. A State DOT said compliance with this rule may result in the need for additional staff or higher level of certification for mechanics. An MPO stated that targets are dependent on financial resources available during a particular time period, and that it is a challenging task for MPOs to coordinate transportation targets with fluctuating funding sources. Another MPO said MPOs, large and small, will need continued support and resources from Federal and State government to implement the new rules regarding transportation planning.

A transit operator said the rule does very little to mention or address operating costs which, over time, typically exceed original capital purchase cost. The commenter said this issue must be addressed along with capital asset investments.

A transit operator stated that if FTA provides the latitude that has been represented over the last few years in many presentations, then the cost has the potential to be within the limits proposed. However, if FTA mandates specific means of compliance, this commenter asserted that the cost would increase for those agencies that will need to modify existing processes that currently meet the intent of the legislation.

One commenter urged FTA to identify and seriously consider plausible alternatives, asserting that FTA did not provide any in the NPRM and where ANPRM commenters proposed alternatives, FTA's responses were inadequate. For example, this commenter asserted that there are conceivable ways to disaggregate safety and SGR from the way they were presented in the NPRM that would still be consistent with the statute.

A transit operator suggested that the analytical processes estimate may increase with implementation of a new SMS.

In response to FTA's request for any data that could assist in quantifying the costs or benefits of the rule, a State DOT said it could analyze rolling stock preventative maintenance costs of the past 2 years, beginning with baseline year of 2015 to determine a baseline and then adjust for inflation. However, these would all be projections and estimates, at best.

FTA'S RESPONSE: Regulatory Impact Analysis—Other Assumptions

FTA agrees that additional training for specialists, including mechanics, may be required to perform some of the tasks outlined in the final rule. Instead of adding additional resources for training, the revised cost estimates below include an estimate for contracting out the tasks for the TAM plan. So, rather than training agency staff, a transit agency can contract the services of a trained mechanic, or other skilled services, whichever is more cost effective. Since it is unknown which tasks may require skills unavailable at a transit agency, this rule presents a range of costs. The low cost case assumes in-house work and the higher cost case assumes that all tasks are contracted out.

FTA appreciates commenters who stated that the cost estimates are reasonable, providing the agencies latitude under TAM to develop their own practices, rather than being prescriptive. The goal of the TAM rule is not to be prescriptive, but allow agencies to develop practices that meet agency needs. Also, another commenter notes that the agencies will incur additional costs in implementing the TAM rule, but acknowledged that the benefits from improved asset management practice may cover these additional costs.

FTA believes that addressing operating costs is a separate issue from managing the assets and is not the subject of this rule. Operating costs are an optional consideration that transit providers may consider when developing their investment prioritization.

FTA agrees that the NPRM did not quantify other alternative approaches. However, alternative approaches were considered in developing the rule. As discussed in the NPRM, FTA developed a tiered approach that allows smaller operators to shift certain burdens of this rule to States. The TAM rule has not expanded on the requirements of the MAP–21 mandate, so an alternative was not considered to be essential. The TAM rule provides agencies significant discretion in choosing methods for data analysis, target setting and project selection.

The cost of applying SMS principles for the safety programs will be included in the appropriate rules—if such principles are adopted—and is not accounted for under this rule. The TAM NPRM assumed additional costs for coordination of group plans above what was estimated in the planning rule.

FINAL RULE:

There are no changes to the final rule as a result of these comments. However, other revisions were made to the analysis to conform with changes made to the final rule.

For example, the number of 49 U.S.C. 5310 subrecipients required to comply with the requirements of this rule is significantly reduced. Applicability changes that only public transportation providers must follow requirements led FTA to use information from a 2006 study from the University of Montana[17] in order to estimate the number of 5310 recipients likely to be effected by this rule. FTA reduced its estimate from 1700 affected in NPRM to 700 in the final rule. This change reduces the cost of inventory and asset condition assessment for the rule.

COMMENTS: Regulatory Flexibility Act

Some commenters provided input on the impacts of the rule to small entities. Several commenters stated that the rule's asset management requirements would be a burden to smaller transit providers and urged FTA to minimize the financial burden and allow flexibility so small operators can more easily comply (*e.g.,* minimal universal requirements that can be applied across all agencies). A tribal government expressed concern that the TAM rule requirements would have a profound effect on its transit program, which consists of only seven buses and no access to additional funding sources. An individual commenter suggested that FTA should define small entities as those entities that are not the certain large entities (which the commenter went on to list by name). A transit operator predicted that the additional cost of setup and continued maintenance would cost an additional 416 hours per year (8 hours per week) of staff time in order to meet the requirements set out by FTA.

Another commenter supported FTA's recognition of the disparate needs of the country's transit agencies and asserted that the proposal's accommodations for smaller agencies are practical and appropriate.

FTA'S RESPONSE: Regulatory Flexibility Act

The FTA accommodates the needs of the small providers by establishing a two-tiered approach that limits the number of TAM plan elements and allows participation in group plans to leverage the administrative burden on small providers.

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[17] *Allocation and Use of Section 5310 Funds in Urban and Rural America,* Tom Seekins, Alexandra Enders, Alison Pepper, and Stephen Sticka, Research and Training Center on Disability in Rural Communities of the Rural Institute, University of Montana

FINAL RULE:

No change has been made in the final rule in response to this comment.

COMMENTS: Paperwork Reduction Act

A transit operator agreed that performance targets are helpful for gauging progress, but expressed concern about the reporting burden FTA proposes to impose on transit agencies, and having this information be used to customize the focus of triennial reviews for individual agencies.

FTA'S RESPONSE: Paperwork Reduction Act

FTA agrees there is a reporting burden on transit agencies; these estimates of burden were included in the PRA section of the NPRM and are also included in this final rule estimates.

FINAL RULE:

No change has been made in the final rule due to these comments.

COMMENTS: Other Regulatory Analyses

A law firm on behalf of a tribal government stated that meaningful tribal consultation is required for this rulemaking and failure to do so can lead to arbitrary and capricious rulemaking. The commenter disagreed with the Administration's conclusion that the proposed rule will "not have substantial direct effects" on one or more Indian tribes or will not impose "substantial direct compliance costs on Indian tribal governments." The commenter asserted that FTA has not yet engaged in any consultation specifically with tribal governments regarding the impact of the rule on tribal transit programs, the vast majority of which do not operate rail systems and receive only modest funding from the FTA. The commenter recommended that the final rule exempt Federally recognized Indian tribes and their transportation agencies from the definition of "recipient" under § 625.5 until such time as the FTA has undertaken meaningful consultation with tribes on this issue.

Asserting that the structure of the proposed TAM rule makes it impossible to review retrospectively due to a lack of defined baseline, a commenter recommended that FTA establish a baseline for the rule, *i.e.*, a current snapshot of asset management practices and the corresponding SGR of assets, which could take the form of an overall survey of asset quality sufficiently representative of transit agencies.

FTA'S RESPONSE: Other Regulatory Analyses

FTA appreciates the comments from tribal representatives and agrees that the final rule will have a substantial impact on tribes.

FTA believes that each of the four elements in a tier II plan is already a part of each transit provider's capital program. For example, in accordance with FTA's Grants Management Requirements Circular 5010.1D, those tribes that are direct recipients of FTA grants must demonstrate procedures for asset management and adequate maintenance of equipment and facilities and maintain an inventory of project property. In addition, FTA anticipates that tribes will coordinate with their State partners in the development of a group TAM plan. This rule does not impose a substantial direct effect on one or more Indian tribes, but merely establishes a framework to achieve and maintain a state of good repair by streamlining existing requirements and practices and supporting informed decision making.

Please also see the analyses of Executive Order 13175 for more specific information about FTAs approach to tribal outreach. FTA recognizes that developing an individual TAM plan, maintaining documentation and reporting requires that a TAM rule be flexible and scalable. This rule is scalable and flexible and provides several options to reduce the burden on small providers, including American Indian tribes.

The baseline for the analysis was developed using current reports published by GAO, FTA and TCRP, and input from five transit agencies interviewed by FTA. SGR baseline is based on current data submitted to NTD. Given the large number of transit agencies, it would be a challenge to develop an exact baseline for the industry to be covered by the rule under the current PRA regulations.

B. Final Rule Analyses and Notices

Executive Order 12866 and 13563; USDOT Regulatory Policies and Procedures

Executive Orders 12866 and 13563 direct Federal agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits—including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Also, Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

FTA has examined the potential economic impacts of this rulemaking and has determined that this rulemaking is likely to be economically significant, in that it may lead to transit providers making investment and prioritization decisions that would result in economic impacts that could exceed $100 million in a year. However, as discussed in greater detail below, FTA was unable to quantify the potential impacts of this rule beyond the costs for transit agencies to assess their assets, develop TAM plans, and report certain information to FTA. Most significantly, due to lack of information about how and the extent to which agencies will change their asset maintenance, rehabilitation and replacement plans and practices in response to this rule, FTA was unable to estimate costs or benefits for additional asset maintenance, rehabilitation or replacement.

The Need for Federal Regulatory Action

In 2014, the number of transit trips exceeded 10 billion for the 8th year in a row. APTA,[18] the 10.7 billion public transportation trips taken in 2014 represented the highest ridership level for transit since 1956. There is reason to believe that this is just the beginning of a sustained period of growing demand for public transportation. Moreover, factors such as the migration of people to urban areas, an aging population that will rely heavily on public transportation and a retiring transit maintenance workforce will further increase demands on existing public transportation systems. While this will increase revenues for the transit agencies, there will be an increased need for funds for maintenance and expansion of the system to meet the growth in demand. Given existing fiscal constraints, it is unlikely that the Nation's SGR backlog can be addressed through increased spending alone. Rather, a systematic approach is needed to ensure that existing funding resources are strategically managed to target the SGR backlog and meet the increased demand for transit.

MAP–21 fundamentally shifted the focus of Federal investment in transit to emphasize the need to maintain, rehabilitate, and replace existing transit investments. The ability of FTA grant recipients, along with States and MPOs, to both set meaningful transit SGR performance targets and to achieve those targets is critically dependent upon the ability of all parties to work together to prioritize the funding of SGR projects from existing funding sources. Although the new SGR Grant Program for fixed-guideway systems and for fixed-route bus systems operating on high-occupancy vehicle (HOV) lanes will also be an essential component of this process, the SGR grants alone will not be enough to address the backlog. The FAST Act increased appropriations to this program, but funding increases by any one source to any one program will not be enough to fully address the financial needs. In these financially constrained times, transit agencies will need to be more strategic in the use of all available funds. The various components of this new National TAM System would work together to ensure that state of good repair becomes and remains a top priority for transit providers, as well as States and MPOs. Together, these elements will assist FTA and the transit industry in justifying SGR investments, both for securing new funding resources and for prioritizing SGR investments with existing funding sources.

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[18] *http://www.apta.com/resources/statistics/Documents/FactBook/2016-APTA-Fact-Book-Appendix-A.pdf.*

Congressional Mandate and Legal Authority

Section 20019 of MAP–21, amended Federal transit law by adding a new section 5326 to Chapter 53 of title 49 of the United States Code (section 5326). The provisions of section 5326 require the Secretary of Transportation to establish and implement a National TAM System which defines the term "state of good repair;" requires that all recipients and subrecipients under Chapter 53 develop a TAM plan, which would include an asset inventory, an assessment of the condition of those assets, decision support tools, and investment prioritization; establishes annual reporting requirements; and mandates that FTA provide technical assistance to Chapter 53 recipients and sub-recipients, including an analytical process or decision support tool that allows for the estimation of capital asset needs and assists with investment prioritization. 49 U.S.C. 5326(b). In addition, section 5326 requires the Secretary to establish SGR performance measures, and recipients are required to set performance targets based on the measures. 49 U.S.C. 5326(c)(1) and (2). Furthermore, each designated recipient must submit an annual report to the Secretary on the condition of their recipients' public transportation systems and include a description of any change in condition since the last report. (49 U.S.C. 5326(b)(3). Each designated recipient must submit also an annual report to the Secretary which describes its recipients' progress towards meeting performance targets established during that fiscal year and a description of the recipients' performance targets for the subsequent fiscal year. (49 U.S.C. 5326(c)(3)).[19]

Identification of Available Alternative Approaches

For the purposes of the analysis below, the costs and benefits of the rule are compared against the base case of existing practice. During the development of the rule, FTA considered various alternative approaches to ensure that the rule remained scalable and flexible enough for different types of transit modes and operating environments. As detailed in Section II of this document, FTA issued an advance notice of proposed rulemaking (ANPRM) and a notice of proposed rulemaking (NPRM) to get feedback from the transit industry and other stakeholders on specific questions relevant to developing the final rule.

For instance, transit providers are classified into two tiers, based on the number of vehicles operated in revenue service and the mode. A tier I provider owns, operates, or manages (1) a rail transit mode or (2) more than one hundred one revenue vehicles. A tier II provider owns, operates, or manages less than one hundred revenue vehicles, or is a rural subrecipient under 49 U.S.C. 5311, or is an American Indian tribe, and is a provider that has no rail fixed-guideway. A tier II provider's TAM plan would be required to include only elements 1 through 4 outlined in § 625.25(b), instead of all nine elements required for tier I providers. Moreover, most tier II providers are eligible to participate in a group TAM plan which would reduce the burden on the provider of developing an individual TAM plan.

FTA considered several definitions for state of good repair before selecting the definition in the rule. FTA believes that the proposed performance measures have the most potential for use by transit providers in estimating the performance of their system, while imposing the least burden for extensive data collection and calculation of measures. Transit providers have the option of using additional performance measures, in particular, for assets for which FTA did not establish performance measures.

As discussed in the NPRM, for example, FTA considered alternatives submitted by commenters that would have limited the asset inventory to rolling stock; however, FTA elected to include rolling stock, equipment, infrastructure and facilities because these other asset categories are important components of transit service and were specifically included in the MAP–21 mandate (49 U.S.C. 5326(b)(1)).

In response to the comments to the NPRM, FTA further reconsidered the choice of which assets to include in the TAM plan, considering the potential costs and benefits. Many commenters expressed concern about the inclusion of third party assets in the TAM plan, arguing that it would be difficult to implement and may prove to be overly burdensome and costly. In consideration of these comments, this final rule requires that only those vehicles, passenger stations, exclusive use maintenance facilities, and guideway infrastructure used in the provision of transit service be included in a transit providers asset inventory, including those vehicles, facilities, and guideway infrastructure that are owned, operated, or maintained by a third-party or were procured jointly. Equipment owned, operated, or maintained by a third-party need not be inventoried under this final rule.

FTA does not believe that it will be overly burdensome for a transit provider to include third-party owned vehicles, facilities, and guideway infrastructure in its asset inventory. Transit providers are already required to include detailed information on third-party vehicles and third-party guideway infrastructure in the NTD, and so already have access to this information for their asset inventory. Expanding asset inventories to include third-party passenger facilities is important, as it will provide valuable information on the total number, size, and scope of facilities in the transit industry, which is an important contributor to state of good repair needs. The inclusion of a broad set of assets into the inventory is intended to provide funding decision makers with a full picture of their system and an opportunity to think proactively and long term about investment priorities for state of good repair.

FTA recognizes the challenge of providing asset condition for assets the agencies have no capital responsibility for. This could be burdensome and of little value to FTA or the transit agencies as they are not responsible for the capital expenditures for these assets. So, the final rule only requires a transit provider to conduct condition assessments, establish performance targets, and include in its investment prioritization, those capital assets (vehicles, passenger facilities, exclusive-use maintenance facilities and guideway infrastructure) that it has direct capital responsibility for.

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[19] The term "designated recipient" is defined in statute as "(A) an entity designated, in accordance with the planning process under sections 5303 and 5304, by the Governor of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 to urbanized areas of $200,000 or more in population; or (B) a State or regional authority, if the authority is responsible under the laws of a State for a capital project and for financing and directly providing public transportation." 49 U.S.C. 5302(4).

Estimated Costs and Benefits

FTA's estimates of the costs of the rule are based on current industry practices, and responses to the NPRM from the industry. There is no data on the cost of the current practice in the industry. The section below outlines the current practice based on studies available. FTA used information from the studies to estimate the incremental costs that transit providers likely would incur to implement the rule. FTA did not estimate the benefits of this rule. Instead, FTA conducted a threshold analysis based on a portion of the rule's costs—specifically those that FTA was able to monetize.

Baseline

There is no single comprehensive source of information on the existing level of compliance with this rule. Most of the roughly two dozen transit providers that have been profiled in existing reports already conduct some or all of the transit asset management activities that would be required under the rule, and this analysis attempts to consider that baseline as the starting point for identifying the incremental costs and benefits of the rule. The transit providers that were profiled in the reports, though, are not a representative sample of the whole transit industry. In general, they represent the large and medium sized urban transit agencies that would fall into tier I.

- The Government Accountability Office (GAO), Transit Asset Management (GAO–13–571)[20] studied nine agencies, which had transit asset management practices with varying levels of sophistication, along with a group of "leaders" in asset management. Overall, GAO found in its case study discussions that all agencies had at least some process for tracking assets and making investment decisions, but many faced challenges with collecting asset-condition data, analyzing performance, and making prioritization decisions in a systematic way. These challenges included a lack of funding, managing staff resources and change in general, and integrating processes such as ranking capital projects with established criteria. In addition, only two of these nine agencies specifically tracked the impact of their capital investment projects on their assets' conditions. However, at least four agencies did track the impacts on service reliability and on-time performance.
- FTA's 2009 Rail Modernization Study[21] Report to Congress examined seven of the nation's largest rail systems. The study found that of the seven agencies examined, all had asset inventory data, but only three had comprehensively updated asset condition data (namely, New York City Transit, Metro-North Railroad, and Long Island Rail Road). Experience with using decision support tools and objective investment prioritization was limited. Only one transit provider, the Massachusetts Bay Transportation Authority, used a decision tool. Prioritization decisions were based on mission critical, safety, coordination on line segment maintenance and maintenance of historical funding levels.
- A 2010 report from FTA, "Transit Asset Management Practices: A National and International Review,"[22] presents case studies from around the United States. In this report, FTA found that all fourteen of the US agencies studied had asset inventory data and an inspection program, although this was not always systematic; for example, information on asset condition or defects was not typically rolled up into an overall asset condition metric. Vehicles and track tended to have the best coverage. Most agencies had at least some strategies, performance measures, and maintenance policies, though agencies' project selection and other decision support tools were often separate from the system used to track asset inventory and condition.
- Transit Cooperative Research Program Report 92, Transit Asset Condition Report: A Synthesis of Transit Practice,[23] notes that large agencies generally have asset-tracking databases, but that many agencies maintain separate equipment rosters that are independent from the mainstream planning, programming and budgeting processes. Most large agencies determine asset condition through age and inspection, and generally do not use asset-condition data to set investment priorities for capital programming.
- FTA's Report to Congress on the State of Good Repair Initiative (2011)[24] stated that only two of the twenty-three agencies contacted were using an objective, multi-factor project- scoring process to help rank and prioritize their investment needs. The report also provided information on FTA's programs in this area, including SGR grants made to transit agencies to implement or enhance a transit asset management system.

Overall, the available literature on current practices suggests that there is room for improvement in transit providers' asset management practices. A handful of leaders in the field, including roughly a dozen agencies that have been profiled by FTA or GAO reports, have implemented sophisticated decision-support systems and integrated transit asset management principles into their planning and operations, with associated "agency culture" changes to encourage collaboration across departments.[25] However, at most other agencies, both large and small, some elements of transit asset management are in place, such as asset inventories, periodic condition assessments, and/or performance measures, but they have not been integrated into a comprehensive system to support data-driven decision-making and project prioritization, much less to trace impacts on ridership, service quality, life-cycle costs, safety and other outcomes. This rulemaking attempts to address that gap by establishing a framework for a National TAM System.

Definition and Evaluation of the Benefits and Costs

For estimating the incremental costs, FTA assumes that most agencies have already incorporated some elements of asset management into their practice. FTA made this assumption using findings from the literature on the state of the practice, comments received on the ANPRM and NPRM, and a limited number of case study interviews. As such, the incremental cost of some activities is likely to be minimal, as agencies move away from their old practices and adopt new ones. Smaller agencies are less likely to have full-fledged asset management systems, but many of their TAM requirements are already standard practice, such as keeping an inventory of assets and tracking vehicle ages.

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[20] *http://www.gao.gov/assets/660/655837.pdf.*

[21] *http://www.fta.dot.gov/documents/Rail_Mod_Final_Report_4-27-09.pdf.*

[22] *https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/TAM_A_National_and_International_Review_-_6.10_FINAL_0.pdf.*

[23] *http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_syn_92.pdf.*

[24] *http://www.fta.dot.gov/documents/SGR_Report_to_Congress_12-12-11_Final.pdf.*

[25] These initiatives are described as cost-effective in the literature, but there is very little quantitative information about the outcomes associated with these programs, because they have generally not had independent evaluation.

Costs are estimated for an average transit provider or asset-type. This is a challenge since it is hard to define an average for an industry that is very diverse, ranging from agencies with thousands of vehicles, multiple modes and many facilities to an operator with a few buses. Some of this has been addressed by estimating costs by tiers defined above. In addition, agencies may be at different stages of asset management practice. The estimates presented below are therefore very difficult to apply to any particular provider.

Costs are estimated using both FTA records such as NTD data and Bureau of Labor Statistics wage data as detailed more specifically in the sections below. To supplement the information available from existing studies, follow-up telephone interviews were conducted with four agencies that received funding through FTA-sponsored pilot programs for TAM initiatives.[26] Although the interviews did not directly address the proposed rule, interviewees' experiences with transit asset management programs provided background on transit provider impacts and helped to gauge the reasonableness of FTA's assumptions for development of a TAM plan and related activities. This very limited set must be regarded as a non-representative sample and merely illustrative of the types of impacts that TAM programs can have.

FTA has limited data on current practices and the costs associated with asset management activities, such as condition assessment, because TAM is a relatively new practice and requirement for transit agencies. FTA made assumptions in order to estimate costs based on the information available. There is also little in the academic literature on quantified benefits or costs for asset management programs for transit agencies.

Another key limitation of the analysis is that FTA has data only on certain asset categories, such as revenue vehicles, stations, maintenance facilities, and guideway miles. As a result, FTA's cost estimation process could not include non-revenue vehicles, or parking facilities and equipment that are not associated with a station or facility.

The analysis takes a societal perspective, including benefits and costs regardless of to whom they accrue. FTA estimates the initial costs (*i.e.* "upfront" or "non-recurring") and recurring costs at different intervals. Future costs are estimated to reflect the time value of money, using a 7% discount rate (with 3% sensitivity case) and a base year of 2015.

Costs to Transit Providers To Implement the Requirements of the National TAM System

The costs of the rule are estimated using an incremental approach. The costs of the rule are defined as the costs of the required asset management activities *over and above* the baseline of current industry practices. Cost items include: the development and implementation of the TAM plan; coordination with group TAM plan sponsors; documentation, recordkeeping and reporting. While no specific training is required for most transit employees, at least one commenter noted that there may be additional training costs, or alternatively that contractor support would be needed. In the analysis below, that is presented as a high-cost case with contractor cost rates.

TAM implementation could also help agencies make more cost-effective investment choices with respect to asset maintenance, rehabilitation, and replacement, but FTA was not able to estimate the benefits and costs of those follow-on actions due to limited information. Of the cost items that were monetized, the specific cost estimates primarily reflect staff labor hours in the lower cost scenario and contractor support in the higher cost scenario. The costs of the TAM plan are estimated based on the costs of each component, including asset inventories, condition assessments, project lists, performance metrics, and targets.

The TAM final rule does not require transit providers to use any particular technology or software system. FTA has emphasized that transit agencies could use something as simple as an Excel spreadsheet to comply with the requirement for a multi-factor prioritization process. Some transit agencies may choose to engage consultants, purchase commercial software, or pursue other approaches that they find more cost-effective. In addition, some commercial software packages provide more sophisticated systems that integrate transit asset information with other modules, such as scheduling and crew assignment, or provide other functionalities. These packages go beyond what is required by the rule, so their costs are not necessarily indicative of the actual costs of the rule.

The overall approach in the subsections below is to estimate the labor-hours required for each TAM task and to multiply by an appropriate wage rate to generate the total cost. The labor-hour estimates are based on findings from the limited literature on transit asset management, expert judgment from FTA staff on the approximate level-of-effort required, the information from the four transit provider interviews, and information from public comments to the NPRM. In some cases, it was possible to cross-check the totals that would result from these assumed cost levels against agencies' actual expenditures on asset management programs, such as those funded through the SGR grant amounts or recent contract awards. These comparisons are discussed in more detail below.

Wage rates for transit provider labor hours are based on May 2015 Bureau of Labor Statistics (BLS) data for urban transit systems and interurban and rural bus transportation.[27] In response to comment, FTA adjusted the hourly wage rates to account for employee benefits.[28] Table 2 below describes the wage rates used and the TAM plan activities to which they relate. For simplicity, FTA applied the urban wage rates to tier I providers and rural rates to tier II providers. FTA received several comments in response to the NPRM noting that transit providers may be more likely to use contractor support to develop their TAM systems than in-house labor, and that costs would be higher in those cases. To address this comment, FTA developed a higher-cost case that assumes contractor support at costs that were roughly two times the fully loaded in-house costs as detailed above.[29] The number of hours per task was assumed to be constant, as were IT costs.

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[26] North Dakota DOT, Long Beach Transit (CA), Sound Transit (WA), and Valley Regional Transit (ID).

[27] *http://www.bls.gov/oes/current/naics3_485000.htm. http://www.bls.gov/oes/current/naics3_485000.htm.*

[28] Bureau of Labor Statistics News Release. Employer Costs for Employee Compensation—September 2014. Table 3, Service-providing industry group. *http://www.bls.gov/news.release/pdf/ecec.pdf.* BLS data show wages as 64.1% of total compensation, with benefits at 35.9%. Therefore, employees' wages are factored by 1.56 (100/64.1) to account for employer provided benefits.

[29] This cost factor was based on two sources of information. Federal Highway Administration collected data on the cost of developing highway asset management plans from 9 States, with preliminary findings showing the contractor support to cost in the range of 1.5 to 1.6 times as much as in-house efforts. A 2013 research report from the Project on Government Oversight study, while focused on the Federal government rather than state and local agencies, found that contractors were paid 1.8 times more than federal employees for similar work. *www.pogo.org/our-work/reports/2011/co-gp-20110913.html#Executive Summary.*

TABLE 2—SUMMARY OF TRANSIT INDUSTRY WAGE RATES AND FRINGE BENEFITS FOR TAM ACTIVITIES

Title	Wage rate	Loaded wage rate	Relevant TAM activities
Urban Transit Systems (NAICS 485100)			
General and Operations Manager	$55.86	$87.14	Plan Strategy, Performance Measures and Targets, Data and Narrative Reporting to NTD.
Operations Specialties Manager	44.64	69.64	Asset Condition Assessment.
Business Operations Specialists	30.74	47.95	Data and Narrative Reporting to NTD.
Buyers and Purchasing Agents	28.94	45.15	Asset Condition Assessment, Analytical Processes, Prioritized Project List.
Installation, Maintenance, and Repair Occupations	24.14	37.66	Asset Condition Assessment.
Interurban and Rural Bus Transportation Systems (NAICS 485200)			
General and Operations Manager	49.35	76.99	Performance Measures and Targets, Data and Narrative Reporting to NTD.
Business Operations Specialists	26.91	41.98	Data and Narrative Reporting to NTD.
Other Office and Administrative Support Workers	13.85	21.61	Asset Condition Assessment, Analytical Processes, Prioritized Project List.
Installation, Maintenance, and Repair Occupations	22.82	35.60	Asset Condition Assessment.

Using NTD submissions and other information, FTA estimated that there are approximately 284 tier I providers and 2,714 tier II providers. These totals include subrecipients, as well as public transportation providers that are receiving 49 U.S.C. 5310 formula grant funding, and subject to this rule, but that do not currently report to the NTD.

For calculation purposes, FTA assumes, based on knowledge of the industry and the requirements of this final rule, that tier I providers and tier II direct recipient providers would develop their own TAM plans, while tier II subrecipient providers, which tend to be much smaller organizations, would participate in a group TAM plan. Participating in a group plan minimizes the burden and costs to small providers of transit services and transfers it to States.

FTA estimated the number of group TAM plans that would be developed for these subrecipients based on existing funding and reporting relationships. Specifically, it was assumed: That the 120 recipients of section 5307 funding would be covered by 10 group TAM plans; that the estimated 700 subrecipients of section 5310 funding would be covered by 200 group TAM plans; and that the 1,300 rural subrecipients of section 5311 funding and 104 American Indian tribes would be covered by 54 Group TAM plans by State DOTs or an equivalent entity. This yields an estimated total of 264 group TAM plans.

The table below shows the number of agencies impacted by the rule and also provides other relevant figures by tier based on our estimates and the 2013 NTD data.

TABLE 3—NUMBER OF AGENCIES, PLANS AND ASSETS BY TIER (2013)[30]

		Tier I agencies	Tier II agencies
	Number of Agencies	284	2,714
	Number of TAM Plans		
	Individual	284	490
	Group Plans	0	264
MAP–21 Asset Category	Number of Assets by Type		
Rolling Stock	Revenue Vehicles	116,472	62,858
Infrastructure	Way Mileage (Track)	12,746	0
	Bridges, Tunnels, & Transitions	2,563	0
Facilities	Rail & Bus Stations	4,195	822
	Maintenance Facilities	1,068	1,367
	Administrative Buildings and Parking Facilities (not part of a Station or Maintenance Facility).	Unknown	Unknown

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[30] Source: National Transit Database, FTA, 2013 (This is the latest year for which data is available).

TABLE 3—NUMBER OF AGENCIES, PLANS AND ASSETS BY TIER (2013)[30]—Continued

		Tier I agencies	Tier II agencies
Equipment	Non-Revenue Vehicles[31]	Unknown	Unknown
	Equipment	Unknown	Unknown

(1) Asset Inventory

Under the final rule, transit providers are required to complete an inventory of their capital assets. The inventory needs to provide accessible, consistent, and comprehensive information about the state of good repair of a transit provider's capital assets. Depending on the provider's size, this information includes number of revenue vehicles, number of stations, number of facilities, number of equipment, and mileage of track as shown in appendix C.[32]

Based on knowledge of the transit industry and information from the transit provider interviews, FTA understands that almost all agencies have a basic inventory of assets that is used for accounting and audit purposes. This supports the intuitive conclusion that transit agencies know what assets they have. These inventories will likely be updated as new assets are purchased and others are depreciated or retired, even in the absence of the rule. Therefore, incremental costs for the asset inventory should be relatively minor. However, several agencies noted in response to the NPRM that existing asset inventories may not be in a format this is usable for TAM, and that there may be staff time and costs required for converting the inventory data to the new format and/or gathering information on non-owned assets (to the extent that they are covered by TAM).[33] For cost estimation purposes, it is assumed that each TAM plan (tier I plan, tier II individual plan, and tier II group plan) will require 96 hours of staff time in the first year, and 36 hours of staff time each year thereafter, to re-format agency asset data into a format that is usable for TAM. For tier I agencies, this labor is estimated at the rate for a purchasing agent ($45.15 per hour including benefits). For tier II agencies, labor costs are estimated using a business operations specialist ($41.98 per hour including benefits). Total costs for the asset inventory are summarized below.

The table below represents the calculations described above for tiers I and II as the low case. The high case was calculated in the same manner with the exception that labor costs were doubled as described above.

TABLE 4—INITIAL AND RECURRING COSTS FOR ASSET INVENTORY

Agency size	Low case		High case	
	Initial 2-year period	Annually recurring	Initial 2-year period	Annually recurring
Tier I	$1,229,246	$460,967	$2,458,492	$921,935
Tier II	3,038,651	1,139,494	6,077,303	2,278,989
Total	4,267,898	1,600,462	8,535,795	3,200,923

(2) Asset Condition Assessment

Under the final rule, transit providers are required to complete an assessment of capital assets for which they have direct financial responsibility. The assessment must include sufficient information to monitor and predict the performance of each capital asset identified in the asset inventory. Additionally, the process must identify unacceptable safety risks related to the condition of the capital assets. The assessment should also be used when prioritizing investments for transit asset management. While many transit providers already perform these assessments, at least for certain asset types, it is likely that additional effort will be required to meet the standards of the rule.

Estimates of the time required for assessment will vary by asset category. FTA's estimates of the time to assess particular assets are listed below. These estimates are based on FTA's experience with the asset assessment in the transit industry, including unpublished results from a pilot study.

For revenue and service vehicles, the rule calls for an age-based assessment for purposes of setting performance targets. Transit providers generally already have records of their vehicles' ages and many are already required to report this information to the NTD. To be conservative, however, FTA assumes that this information may be in a different format or database and/or require additional effort to be brought into the asset management system. For estimation purposes, FTA assumes that approximately 30 minutes per vehicle would be required. As noted above, one data limitation is that no information was available through NTD on non-revenue vehicles, but FTA does not expect this to have much impact on the overall total, as the number of service vehicles is presumed to be much smaller than the number of revenue vehicles, which is known. Nonetheless, FTA is including non-revenue vehicles in TAM because they are capital assets that can affect transit service quality, for example through maintenance calls and incident response.

For facilities, the rule calls for a condition-based assessment for purposes of setting performance targets. Costs per passenger station are estimated based on two staff members, each working a half day, for a total of eight hours per station. For maintenance facilities, costs are estimated based on two staff members working a full day, for a total of 16 hours per facility. FTA assumes that equipment and parking facilities that are part of stations or maintenance facilities would be part of the assessment for that station or maintenance facility. FTA does not have separate data on equipment, administrative buildings or parking facilities. These are rough averages that reflect the wide range of assets in this category. For example, a downtown subway station may contain multiple platforms, exits, and passageways, whereas an outlying commuter railroad station may consist of little more than a platform and a shelter. It is also possible for equipment to be located at administrative facilities or parking facilities that are not reflected in these totals, though FTA believes that to constitute a small share of transit agency equipment or total facilities.

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[31] The table only includes assets reported to the NTD; therefore, it does not does not include non-revenue vehicles or equipment assets.

[32] *http://www.ntdprogram.gov/ntdprogram/assetInventory.htm.*

[33] Non-owned assets would need to be included in the asset inventory if the agency uses them for providing transit service. Asset condition assessment is only required for assets that an agency has direct capital responsibility.

For infrastructure way mileage (*e.g.*, railroad tracks or separated BRT guideways), the rule calls for a performance-based assessment for purposes of setting performance targets. Transit providers already have some performance-related information such as speed restrictions, but again FTA assumes that some additional effort would be required to prepare this information in a way that is consistent with the rule. For estimation purposes, FTA assumes that this would require roughly 30 minutes per mile of way. However, under special circumstances such as for subway tunnels, elevated structures, and the transitions from ground level to these areas, additional time may be necessary to assess the performance and also determine the structural or tunnel integrity. In these cases, FTA assumes that this would require roughly 1 hour per mile of way.

For equipment, the rule calls for an age-based assessment for purposes of setting performance targets. Equipment is defined as an article of nonexpendable, tangible property having a useful life of at least one year. FTA lacks specific information about transit providers' ownership of equipment, this final rule clarifies that asset equipment inventory does not include third party equipment, or owned equipment under $50,000. As a result, the total size of this asset class is not known, and the cost estimates do not include TAM costs associated with equipment. In addition, FTA does not have data on the extent to which condition assessments are already routinely undertaken for these equipment assets. However, FTA believes that most equipment will be located within maintenance facilities and passenger stations, or along rail guideways, and thus the costs of condition assessments for equipment would often be included in the condition assessments for those facilities, stations, or guideways. Even in cases where they are not, the condition assessment for these assets should be relatively simple, as the rule requires only a simple, age-based assessment.

FTA assumes that the asset condition assessment would need to be performed as part of the initial plan development, and would also need to be repeated periodically in order to fully implement the other provisions, notably investment prioritization, performance measures, and reporting requirements. FTA assumes that assessments for revenue vehicles, equipment and guideway infrastructure are repeated on an annual basis, while passenger stations and exclusive use maintenance facilities are assessed every three years.

Following, is a detailed accounting of incremental costs by provider type.

Tier I Providers

Based on 2013 NTD data, tier I providers operate a total of 116,472 revenue vehicles, 4,195 stations, 1,068 maintenance facilities, 12,746 miles of standard track, and 2,563 miles of track within subway tunnels or on elevated structures (including transitions). These assets would be tracked or inspected by various employees at the transit provider. It is likely that the age-based assessment of the vehicles would be conducted by a buying or purchasing agent at a loaded wage rate of $45.15, the condition-based station and maintenance facility assessment would be conducted by an installation or maintenance repair worker at a loaded wage rate of $37.66, and the performance-based way mileage, elevated structure, and tunnel assessment would be conducted by an operations specialties manager at a loaded wage rate of $69.64. Multiplying the number of assets, by the corresponding time requirement described above, and by the corresponding wage rate leads to a total initial cost of $5.16 million. Thus, FTA's analysis finds that, on average, each tier I agency would incur an initial cost of just over $18,000 (low case) to just over $36,000 (high case) to comply with this rule's requirements for asset condition assessments.

FTA assumes that the vehicles and way mileage, elevated structures, and tunnels would be assessed annually at a total annual cost of approximately $3.25 million and the stations and maintenance facilities would be assessed triennially at a tri-annual cost of approximately $1.91 million.

Tier II Providers

Based on 2013 NTD data and our approximations for non-reporting providers, the tier II providers operate a total of 62,858 vehicles,[34] 822 stations, 1,367 maintenance facilities, and 0 miles of way mileage.[35] These assets would be tracked or inspected by various different employees of the transit provider. It is likely that the age-based assessment of the vehicles would be conducted by an office or administrative support worker at a loaded wage rate of $21.61, and the condition-based station and maintenance facility assessment would be conducted by an installation or maintenance repair worker at a loaded wage rate of $35.60. Multiplying the number of assets, by the corresponding time requirement described above, and by the corresponding wage rate leads to a total initial cost of $1.70 million.

FTA assumes that vehicles' age-based assessments would be updated annually at a total annual cost of approximately $0.68 million and the stations and maintenance facilitates would be assessed triennially at a tri-annual cost of approximately $1.01 million.

The table below represents the calculations described above for tiers I and II as the low case. The high case was calculated in the same manner with the exception that labor costs were doubled as described above. Thus, FTA's analysis finds that, on average, each tier II agency would incur an initial cost of just over $623 (low case) to $1,247 (high case) to comply with this rule's requirements for asset condition assessments.

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[34] This includes the vehicle count from NTD, plus an estimated 21,000 vehicles for the roughly 700 section 5310 subrecipients who do not submit any vehicle counts or other asset data to NTD.

[35] Rural transit agencies do not submit annual reporting on their miles of right-of-way. These rural agencies typically operate buses and paratransit vehicles on public streets and generally do not own any rail systems or other transit rights-of-way. There may be a small number of exceptions that are not accounted for in this section due to the data limitation.

Tier I	$5,158,711	$3,251,448	$1,907,262	$10,317,422	$6,502,897	$3,814,525
Tier II	1,691,781	679,055	1,012,726	3,383,562	1,358,110	2,025,452
Total	6,850,492	3,930,503	2,919,988	13,700,984	7,861,007	5,839,977

(3) Analytical Processes

Under the final rule, transit providers are required to present a list of analytical processes or decision-support tools that allow for capital investment needs to be estimated over time and to assist with capital asset investment prioritization. No specific format or software is mandated, but certain capabilities are required. The investment prioritization plan must identify each asset within the asset inventory that is included within an investment project over the timeframe of the TAM plan. Projects must be ranked in order of priority and the year in which they are expected to be carried out. The prioritization must account for SGR policies and strategies, as well as funding levels and the value of needed investments.

GAO's review of existing practices indicated that, at least among larger transit providers, staff already conduct some form of this analysis when making investment decisions, but to varying degrees and not necessarily in a way that conforms to the proposed requirements. Smaller transit providers may have less in the way of formal analytical tools for prioritizing projects and for incorporating asset condition information into this process. Estimates for this component generally assume that larger agencies would be expanding and strengthening their existing activities, while smaller agencies may be essentially starting from scratch or from more informal processes.

Transit providers have a number of options for developing a system that would satisfy the proposed requirements of the TAM plan. Some may choose to purchase commercial software specifically designed for enterprise asset management; these can include packages that combine asset management with software tools for other functions, such as maintenance and scheduling. Others may develop their own tools in-house, for example using a custom Excel workbook to incorporate asset-condition information and other asset-management considerations into project prioritization. The in-house development option is used here for cost-estimation purposes, though some providers may find it more cost-effective to purchase software.

There are also free and low-cost software packages available for agencies to adapt to their needs, including the TERM-Lite tool from FTA, available free of charge. The TCRP also has a free tool composed of four spreadsheet models entitled the Transit Asset Prioritization Tool (TAPT). This tool "is designed to assist transit agencies in predicting the future conditions of their assets, and in prioritizing asset rehabilitation and replacement."[36] Such a tool would be particularly useful for smaller providers.

The following, is a detailed accounting of incremental costs by provider type.

Tier I Providers

The resources required to implement the analytical processes would vary significantly across transit providers, based on the size and complexity of their asset portfolios and the strength of their current practices. As an overall average based on interviews and past pilot projects, FTA estimates that a transit provider would spend the equivalent of 520 person-hours for strengthening its analytical and decision-support tools and processes (or alternatively, purchasing or learning a ready-made software tool for an equivalent sum). FTA assumes that this task would be completed by the aforementioned buyer or purchasing agent at a loaded wage rate of $45.15. Multiplying the hours required, by the number of transit providers, by the wage rate leads to a total initial cost of $6.66 million.

Once the initial investment is made in the analytical and decision-support tools and processes, maintaining and updating those processes is estimated to take the equivalent of 208 hours per year on average. The same buyer or purchasing agent is assumed to conduct these recurring updates at the $45.15 wage rate. Multiplying the recurring hours required, by the number of agencies, by the wage rate leads to a total recurring cost of $2.66 million.

Tier II Providers

Tier II providers have smaller vehicle fleets and no rail fixed-guideway service, removing some of the complexities in project prioritization that tier I providers face, but they also tend to have fewer existing formal processes in this area. In order to implement the analytical processes, FTA estimates that providers would spend the equivalent of 520 person-hours on average developing their analytical and decision-support tools or processes (or alternatively, purchasing or learning a ready-made software tool for an equivalent sum) for each individual TAM plan or group TAM plan. FTA assumes this task would be completed by a business operations specialist at a loaded wage rate of $41.98. Multiplying the hours required, by the estimated number of individual and group plans created, by the wage rate leads to a total initial cost of $16.46 million.

Once the initial system investment is made, maintaining and updating the analytical processes is estimated to take the equivalent of 104 hours per year. This is half of the assumed time needed for tier I providers because of the comparative simplicity of the systems overseen by tier II providers. The same business operations specialist is assumed to conduct these recurring updates at the $41.98 wage rate. Multiplying the recurring hours required, by the estimated number of individual and group plans created, by the wage rate leads to a total recurring cost of $3.29 million.

The table below represents the calculations described above for tiers I and II as the low case. The high case was calculated in the same manner with the exception that labor costs were doubled as described above.

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[36] Schwager, Dianne. Transit Cooperative Research Program Report 172: Guidance for Developing a Transit Asset Management Program. Sponsored by the Federal Transit Administration. 2014. *http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_172.pdf.*

Tier I	$6,658,417	$2,663,367	$13,316,834	$5,326,733
Tier II	16,459,362	3,291,872	32,918,723	6,583,745
Total	23,117,778	5,955,239	46,235,557	11,910,478

(4) Prioritized Project List

Under the final rule, transit providers are required to develop a list of projects from the investment prioritization process described above. The list must include projects for which funding would be sought under the section 5337 SGR Formula Program. While it is known that agencies generally have a method of determining which projects they would need to invest in next—and many large, multi-modal agencies often have sophisticated, multi-year planning tools—the level of detail and process involved in updating the list is unknown. Following is a detailed accounting of incremental costs by provider type.

Tier I Providers

The large tier I providers in this category tend to have existing processes for generating prioritized project lists based on scenario analysis.[37] However, for some transit providers, additional effort may be needed to develop a project list that reflects the requirements of the rule. While there is less case-study information on the practices of medium-sized tier I providers, most are believed to have existing processes for developing prioritized project lists. To align this process with the requirements of the rule, FTA estimates that transit providers would spend an average of 96 hours above their current baseline in creating the prioritized project list. FTA assumes this task would be completed by the aforementioned buyer or purchasing agent (in coordination with other staff) at a loaded wage rate of $45.15. Multiplying the hours required, by the number of agencies, by the wage rate leads to a total initial cost of $1.23 million.

Once the initial project list is created, maintaining and updating the list is estimated to take 36 hours per year. The same buyer or purchasing agent is assumed to conduct these recurring updates at the $45.15 wage rate. Multiplying the recurring hours required, by the number of agencies, by the wage rate leads to a total recurring cost of $0.46 million.

Tier II Providers

As with larger transit providers, smaller transit providers generally have some form of an existing process for developing a prioritized project plan, but are assumed to require time above their current baseline to make this process consistent with the proposed TAM requirements. FTA estimates that each tier II provider developing a TAM plan, along with each group TAM plan sponsor would spend an average of 96 hours creating their prioritized project list. FTA assumes this task would be completed by the business operations specialist (in coordination with other staff) at a loaded wage rate of $41.98. Multiplying the hours required, by the estimated number of individual and group plans, by the wage rate leads to a total initial cost of $3.04 million.

Once the initial project list is created, maintaining and updating the list is estimated to take 24 hours per year. The same business operations specialist is assumed to conduct these recurring updates at the $41.98 wage rate. Multiplying the recurring hours required, by the estimated number of individual and group TAM plans, by the wage rate leads to a total recurring cost of $0.76 million.

The table below represents the calculations described above for tiers I and II as the low case. The high case was calculated in the same manner with the exception that labor costs were doubled as described above.

TABLE 7—INITIAL AND RECURRING COSTS FOR THE PRIORITIZED PROJECT LIST

Agency size	Low case		High case	
	Initial 2-year period	Annually recurring	Initial 2-year period	Annually recurring
Tier I	$1,229,246	$460,967	$2,458,492	$921,935
Tier II	3,038,651	759,663	6,077,303	1,519,326
Total	4,267,898	1,220,630	8,535,795	2,441,260

(5) Plan Strategy

Under the final rule, tier I transit providers are required to develop TAM and SGR policies and strategies. This includes a description of key TAM activities spanning the time horizon of the plan, a specification of the resources needed to develop and implement the plan, and an outline of how the plan and related business practices would be updated over time.

These components are optional for tier II providers. Following, is a detailed accounting of incremental costs by provider type.

Tier I Providers

FTA estimates that these providers would spend an average of 96 hours developing the elements of the plan strategy above what they are currently doing in this area. Because this component deals with high level strategy, FTA assumes this planning task will be completed by a general operations manager at a loaded wage rate of $87.14. Multiplying the hours required, by the number of providers, by the wage rate leads to a total initial cost of $2.37 million.

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[37] FTA, *Transit Asset Management Practices: A National and International Review,* June 2010.

Every four years, providers would need to update their strategy document based on recent and planned activities and other developments. FTA estimates that this document update would require an average of 80 hours of incremental staff time. The same operations manager is assumed to conduct these recurring updates at the $87.14 wage rate. Multiplying the recurring hours required, by the number of providers, by the wage rate leads to a total four-year recurring cost of $1.98 million.

Tier II Providers

There are no initial or recurring costs for this aspect of the TAM plan because tier II providers may opt out of completing these requirements, whether they develop their own TAM plan or participate in a group TAM plan.

The table below represents the calculations described above for tiers I and II as the low case. The high case was calculated in the same manner with the exception that labor costs were doubled as described above.

TABLE 8—INITIAL AND RECURRING COSTS FOR THE PLAN STRATEGY

Agency size	Low case		High case	
	Initial 2-year period	Quadrennially recurring	Initial 2-year period	Quadrennially recurring
Tier I	$2,372,691	$1,977,243	$4,745,383	$3,954,486
Tier II	0	0	0	0
Total	2,372,691	1,977,243	4,745,383	3,954,486

(6) Performance Measures and Targets

In addition to the TAM plan, under the final rule transit providers are required to use performance measures to set targets for capital assets. Transit providers need to use their asset condition assessments to determine the percentage of their assets that meet specified performance standards. Based on these performance measures and available funding, transit providers are required to develop annual SGR performance targets that align with their TAM plan priorities. With the exception of a few transit providers profiled in more depth by GAO reports, it is unknown to what extent agencies are currently monitoring performance or whether their existing metrics and targets would meet the requirements of this section.

Transit providers have a number of resources to draw on in developing their measures and targets, including FTA publications[38] and TCRP Report 172.[39] Nonetheless, some compliance costs are assumed to be necessary to adapt this guidance to the details of each transit provider's assets, operating environment, and strategies. Setting performance measures and targets should be more straightforward for tier II providers, which are smaller and do not have the complexities associated with rail fixed-guideway elements. Following, is a detailed accounting of costs by provider type.

Tier I Providers

FTA's 2010 review of practices found that many large transit providers have existing performance measures for asset management. However, practices vary, and some transit providers would need additional work to comply with the proposed provisions. Compared to the largest tier I providers, medium-sized tier I providers have less complex asset portfolios, but also may have less in the way of existing activities for performance measures. Overall, based on information from interviews, FTA estimates that transit providers would spend an average of 208 hours developing their performance measures and targets. FTA assumes this task would be completed by the aforementioned operations manager at a loaded wage rate of $87.14. Multiplying the hours required, by the number of transit providers, by the wage rate leads to a total initial cost of $5.14 million.

Once the initial measures and targets are developed, FTA estimates that reviewing and updating them annually would take the equivalent of 36 hours per year on average. The same operations manager is assumed to conduct these recurring updates at the $87.14 wage rate. Multiplying the recurring hours required, by the number of transit providers, by the wage rate leads to a total recurring cost of $0.89 million.

Tier II Providers

Tier II providers do not have the complexities associated with developing performance measures for rail fixed-guideway transit. FTA estimates that tier II providers developing their own TAM plan and group TAM plan sponsors would each spend an average of 80 hours developing the performance measures and targets. FTA assumes this task would be completed by the operations manager at a loaded wage rate of $76.99. Multiplying the hours required, by the estimated number of individual and group plans, by the wage rate leads to a total initial cost of $4.64 million.

Once the initial measures and targets are developed, FTA estimates that reviewing and updating them annually would take the equivalent of 24 hours per year on average. FTA assumes the same operations manager will conduct these recurring updates at the $76.99 wage rate. Multiplying the recurring hours required, by the estimated number of individual and group plans, by the wage rate leads to a total recurring cost of $1.39 million.

The table below represents the calculations described above for tiers I and II as the low case. The high case was calculated in the same manner with the exception that labor costs were doubled as described above.

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[38] *http://www.fta.dot.gov/documents/FTA_Report_No._0027.pdf.*

[39] TCRP Report 172 is available at *http://www.tcrponline.org/PDFDocuments/tcrp_rpt_172.pdf.*

TABLE 9—INITIAL AND RECURRING COSTS FOR THE PERFORMANCE MEASURES AND TARGETS

Agency size	Low case		High case	
	Initial 2-year period	Annually recurring	Initial 2-year period	Annually recurring
Tier I	$5,140,832	$889,759	$10,281,663	$1,779,519
Tier II	4,643,796	1,393,139	9,287,591	2,786,277
Total	9,784,627	2,282,898	19,569,254	4,565,796

(7) Data and Narrative Reporting to NTD

Under the final rule, transit providers are required to submit an annual data report to the NTD, which reflects the SGR performance targets for the following year and assessment of the condition of the transit provider's transit system. Additionally, transit providers are required to submit an annual narrative report to the NTD that provides a description of any change in the condition of its transit system from the previous year and describes the progress made during the year to meet the targets previously set for that year. FTA estimated costs for the new reporting to the NTD based on a pilot program with seven rail transit providers. Based on internal FTA reports, it is expected that the reporting requires a transit provider's staff time that is equivalent to 0.16 hours per revenue vehicle initial and 0.08 hours per vehicle in subsequent years. (For simplicity these figures are expressed in terms of hours per vehicle, but include time required for reporting on other assets such as stations and facilities. FTA's pilot program also used an alternative methodology based on the time required per data field submitted, which yielded nearly identical results.) These estimated labor-hour requirements have been applied in the calculations below. The calculations also include the estimated time required for the narrative report, which was not included in FTA's pilot program or earlier estimates.

Tier I Providers

With a total of 116,472 revenue vehicles and FTA's estimate of 0.16 reporting hours per vehicle, FTA estimates that these providers collectively require a total of 18,636 hours for their initial reporting to the NTD under the rule. Multiplied by the loaded wage rate of $47.95 for a Business Operations Specialist, the total cost is approximately $0.89 million for tier I providers. The narrative report is separately estimated to require 24 labor hours per provider to develop and submit, including 22 hours for a Business Operations Specialist (loaded wage rate $47.92) and 2 hours for managerial review of the document by a general operations manager (loaded wage rate $87.14). Across the 284 agencies in this group, the total cost is approximately $0.35 million.

Once the initial report and template are created, FTA estimates that updating the data reports annually would take the equivalent of 9,318 hours per year, based on FTA's estimate of 0.08 hours per revenue vehicle and 116,472 vehicles. At a loaded wage rate of $47.95 for a Business Operations Specialist, the total cost is approximately $0.45 million. Updating the narrative report is estimated to require an additional 20 hours per year (18 hours for preparation by a Business Operations Specialist and 2 hours for review by the general operations manager). Multiplying the respective hours required, by the number of transit providers, by the wage rates leads to a total recurring cost of $0.29 million.

Tier II Providers

With an estimated total of 62,858 revenue vehicles and FTA's estimate of 0.16 reporting hours per vehicle, FTA estimates that collectively these providers require a total of 10,057 hours for their initial reporting to the NTD under the rule. Multiplied by the loaded wage rate of $41.98 for a Business Operations Specialist, the total cost is approximately $0.42 million. The narrative report is separately estimated to require 16 labor hours per TAM plan (individual or group TAM plan) to develop and submit, including 14 hours for a Business Operations Specialist (loaded wage rate $41.98) and 2 hours for managerial review of the document by a general operations manager (loaded wage rate $76.99). Across the 754 individual and group tier II TAM plans, the total cost is approximately $0.56 million.

Once the initial report and template are created, FTA estimates that updating the data report annually would take the equivalent of 5,029 hours per year, based on FTA's estimate of 0.08 hours per revenue vehicle and 62,858 vehicles. At a loaded wage rate of $41.98 for a Business Operations Specialist, the total cost is approximately $0.21 million. Updating the narrative report is estimated to require an additional 8 hours per year (6 hours for preparation by a Business Operations Specialist and 2 hours for general operations manager review). Multiplying the respective hours required, by the number of transit providers, by the wage rates leads to a total recurring cost of $0.31 million.

TABLE 10—INITIAL AND RECURRING COSTS FOR THE DATA AND NARRATIVE REPORTING TO NTD

Agency size	Low case		High case	
	Initial 2-year period	Annually recurring	Initial 2-year period	Annually recurring
Tier I	$1,242,310	$741,078	$2,484,619	$1,482,156
Tier II	981,432	517,111	1,962,864	1,034,222
Total	2,223,742	1,258,189	4,447,484	2,516,378

(8) State and MPO Target Setting

Under the performance management framework established by MAP–21, States, MPOs, and transit providers must establish targets in key national performance areas to document expectations for future performance. In accordance with 49 U.S.C. 5303(h)(2)(B)(ii) and 5304(d)(2)(B)(ii), States and MPOs must coordinate the selection of their performance targets, to the maximum extent practicable, with performance targets set by transit providers under 49 U.S.C. 5326 (transit asset management) and 49 U.S.C. 5329 (safety), to ensure consistency.

In the Joint FTA and FHWA Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning (Joint Planning) NPRM, both agencies indicated that their performance-related rules would implement the basic elements of a performance management framework, including the establishment of measures and associated target setting. Because the performance-related rules implement these elements and the difficulty in estimating costs of target setting associated with unknown measures, the Joint Planning NPRM did not assess these costs. Rather, FTA and FHWA proposed that the costs associated with target setting at every level would be captured in each provider's respective "performance management" rules. For example, FHWA's second performance management rule NPRM, published after the joint planning NPRM, assumes that the incremental costs to States and MPOs for establishing performance targets reflect the incremental wage costs for an operations manager and a statistician to analyze performance-related data.

The RIA that accompanies the forthcoming Joint Planning final rule captures the costs of the effort by States, MPOs, and transit providers to coordinate in the setting of State and MPO transit performance targets for state of good repair and safety. FTA believes that the cost to MPOs and States to set transit performance targets is included within the costs of coordination.

(9) Other Costs

In addition to the costs estimated in the subsections above, the final rule also entails costs for FTA to provide technical assistance to support the transit industry in implementing the new requirements, and for internal costs associated with training for FTA employees who work with the new TAM system. FTA estimates that the agency could incur an annual cost of $2 million to develop and provide guidance and training, as well staff for program management. This is based on current FTA costs for research, stakeholder outreach and staffing costs since the MAP–21 Reauthorization Act. It is likely that the FTA costs may decline over time as the program matures and asset management becomes an integral part of transit agencies' project prioritization practice. FTA assumes that after the first five years, the costs would fall to $1.5 million and then $1 million after 10 years and to $0.5 million after fifteen years.

Another cost area is for coordination necessary to develop group TAM plans. For example, group TAM plan sponsors and their participating providers may need to hold meetings or conference calls to collect data, test a software tool, or more generally to coordinate efforts to develop plans for the smaller agencies. For estimation purposes, this coordination is assumed to require a mix of transit provider staff and managerial oversight. For each of the estimated 264 group TAM plans, FTA assumes that coordination would require 120 hours of staff time (business operations specialist, loaded wage rate $41.98) and 40 hours of management time (general operations manager, loaded wage rate $76.99) per transit provider. This yields a total annual coordination cost of approximately $2.1 million.

Transit providers are required to keep records of its TAM plan development for at least one cycle of plan development which covers four years. FTA assumes that the tier I providers may spend approximately 80 hours every four years to coordinate the collection and formatting of the data for record keeping purposes. Using the business operations specialists loaded wage rate, the cost of recordkeeping for tier I providers would be $1.1 million every four years. For the tier II providers, FTA assumes that the group plan developers would retain the records on behalf of the small transit agencies. The level of effort for record keeping would be lower at 40 hours per plan cycle, since the coordination cost of gathering the relevant cost is already accounted for. Using the business operations specialist loaded wage rate $41.98, the total cost for recordkeeping for tier II providers would be $1.3 million for every plan cycle. Therefore, the total cost for recordkeeping would be $2.4 million.

A final cost area is related to the information technology (IT) costs associated with establishing an asset management system. The TAM requirements are intended to be technology-neutral, and no specific hardware or software is required. However, FTA is aware that some agencies may need to make IT investments to support their implementation of TAM, such as asset management software or handheld computers. The nature and size of these expenditures will vary by agency, and some agencies may not require IT investments. An assumed figure of $5,000 per TAM plan (individual plan or group plan) is used as an overall average. This equates to approximately $1.42 million for tier I providers ($5,000 multiplied by the 284 estimated plans) and $3.77 million for tier II providers ($5,000 multiplied by the 754 estimated plans, which is 490 individual plans and 264 group plans).

Cost Summary

The costs estimated in the subsections above are based on best estimates of the required labor hours and other costs of implementing the required components of the National TAM System available to the FTA. They are inherently imprecise given the lack of consistent data on existing industry practices, and the variability in costs across agencies due to different labor rates, system sizes and complexities, and other factors. Indeed, even among agencies that have already implemented TAM plans, little information exists on the total costs of implementation due to limited recordkeeping on internal labor costs.

One means of providing an external check on the reasonableness of the cost estimates is to compare estimates from the model used here against known TAM projects. For example, for a small tier I transit provider with an asset profile of 10 revenue vehicles and one maintenance facility, the model would predict TAM implementation costs of roughly $42,535 initial (over a period of two years, and thus roughly $21,000 per year) and $9,856 per year thereafter in the lower cost (in-house) case or roughly double for the higher-cost contractor case (see Table 11 below). The figures would be lower if this agency elected to participate in a group TAM plan, as certain fixed costs could be spread across multiple agencies. In addition, the incremental cost now assumed for inventory database development is unlikely to be an issue for an agency operating 10 vehicles and they may not incur extra IT costs, as those are attributed to the group plan sponsor. Making an allowance for these costs, the small agency cost could be as low as around $21,000 upfront. By comparison, in fiscal year 2010, FTA made SGR grants to small transit providers in

California and Washington to implement asset management systems; the Federal share of these grants were in the range of $16,000 to $17,000 for agencies that were similar to, or slightly smaller than, the example used here. The general correspondence between model results and actual grant levels for asset management systems suggests that the cost model is producing results that are consistent with the limited real-world experience, at least for smaller agencies. For larger transit providers, actual versus predicted costs may vary more significantly due to differences in existing practices. Information from past grants may not provide a clear picture, and they might face little to no incremental costs from the rule because their existing practices generally meet or exceed the proposed TAM requirements.

The table below represents the calculations described above for the low case along with illustrative examples of three other agency types: A comparatively larger tier II agency with 80 revenue vehicles, a mid-size tier I agency with 500 revenue vehicles, and a large tier I agency with 2,500 revenue vehicles.

TABLE 11—ESTIMATION OF INITIAL TAM COSTS FOR ILLUSTRATIVE TRANSIT PROVIDERS

	Mid-size tier I agency	Larger tier I agency	Small tier II agency	Larger tier II agency
Revenue Vehicles	500	2,500	10	80
Number of Stations	50	200	0	2
Low Case—Initial 2-Year Period Cost	$109,312	$234,477	$42,535	$44,331
Low Case—Annually Recurring Cost	$45,979	$127,320	$9,856	$11,071
High Case—Initial 2-Year Period Cost	$213,624	$463,955	$80,070	$83,662
High Case—Annually Recurring Cost	$91,958	$254,640	$19,712	$22,141

Table 12 below shows the total estimated costs for TAM activities under the rule for the low case, aggregated by provider size and separated by initial and recurring costs. Note that TAM-related implementation costs for capital investments are unknown; this category represents the capital and maintenance projects that agencies would undertake as a result of their TAM analysis. FTA could not estimate this category due to data limitations. However, FTA believes that these implementation actions would result in zero or negative net costs over the life of the asset (*i.e.* lifecycle cost savings) compared to a baseline of actions unsupported by TAM analysis where avoided regular timely expenditures may result in higher repair or rehabilitation costs later in the life of the asset, because TAM activities provide insight into prioritization decisions. Table 13 shows the total estimated costs for TAM activities under the rule for the high cost case of contracting out the work.

TABLE 12—SUMMARY OF AGENCY COSTS BY GROUP FOR LOW CASE

Agency size	Initial 2-year period	Annually recurring	Triennially recurring	Quadrennially recurring	TAM-related capital investment costs
Tier I	$24,449,578	$8,467,587	$1,907,262	$3,065,328	Unknown.
Tier II		9,923,220	1,012,726		Unknown.
FTA Cost	4,000,000	2,000,000, then lower over time.	0	0	$0.
	62,073,251	20,390,807	2,919,988	4,331,433	Unknown.

TABLE 13—SUMMARY OF AGENCY COSTS BY GROUP FOR HIGH COST CASE

Agency size	Initial 2-year period	Annually recurring	Triennially recurring	Quadrennially recurring	TAM-related capital investment costs
Tier I	$47,481,030	$16,935,174	$3,814,525	$6,130,656	Unknown.
Tier II	63,477,346	19,846,440	2,025,452	2,532,209	Unknown.
FTA Cost	4,000,000	2,000,000, then lower over time.	0	0	$0
Total	114,958,376	38,781,614	5,839,977	8,662,866	Unknown.

Table 14 below shows the total quantified costs and the present value of the rule over the 20-year analysis period, including tier II group TAM plan coordination costs. For the purposes of this analysis, 2015 serves as the discounting base year and dollar figures appear as 2015 dollars. For the low cost case, the annualized cost of the rule is $23.2 million (at the 7% rate) and $22.8 million (at the 3% rate). For the high cost case, the annualized cost of the rule is $44.5 million (at the 7% rate) and $43.8 million (at the 3% rate).

TABLE 14—SUMMARY OF QUANTIFIED UNDISCOUNTED AND DISCOUNTED COSTS 2016–2035

[Millions]

Year	Low case			High case		
	Undiscounted	Discounted (7%)	Discounted (3%)	Undiscounted	Discounted (7%)	Discounted (3%)
2016	$31.0	$29.0	$30.1	$57.5	$53.7	$55.8
2017	31.0	27.1	29.3	57.5	50.2	54.2
2018	20.4	16.6	18.7	38.8	31.7	35.5
2019	20.4	15.6	18.1	38.8	29.6	34.5
2020	23.3	16.6	20.1	44.6	31.8	38.5
2021	24.2	16.1	20.3	46.9	31.3	39.3
2022	19.9	12.4	16.2	38.3	23.8	31.1
2023	22.8	13.3	18.0	44.1	25.7	34.8
2024	19.9	10.8	15.2	38.3	20.8	29.3
2025	24.2	12.3	18.0	46.9	23.9	34.9
2026	22.3	10.6	16.1	43.6	20.7	31.5
2027	19.4	8.6	13.6	37.8	16.8	26.5
2028	19.4	8.0	13.2	37.8	15.7	25.7
2029	26.6	10.3	17.6	52.3	20.3	34.6
2030	19.4	7.0	12.4	37.8	13.7	24.3
2031	18.9	6.4	11.8	37.3	12.6	23.2
2032	21.8	6.9	13.2	43.1	13.7	26.1
2033	23.2	6.9	13.6	45.9	13.6	27.0
2034	18.9	5.2	10.8	37.3	10.3	21.3
2035	21.8	5.6	12.1	43.1	11.1	23.9
Total	449.0	245.5	338.4	867.7	470.9	652.0

Benefits

As noted above, FTA research, the academic literature, and external reviews from organizations such as GAO have documented a strong case for the value of asset management programs for capital-intensive public agencies in general, including transit agencies. Asset management programs have been described as leading to the following outcomes and benefits:

(1) Improved transparency and accountability from the use of systematic practices in tracking asset conditions and performance measures. In turn, this can lead to improved relationships with regulators, funding agencies, taxpayers and other external stakeholders, as well as improved internal communications and decision-making. While difficult to quantify or monetize, these impacts are sometimes described as some of the most important benefits from asset management because they relate to stewardship of public resources and the effective delivery of services.

(2) Optimized capital investment and maintenance decisions, leading to overall life-cycle cost savings (or alternatively, greater value for dollars spent).

(3) More data-driven maintenance decisions, leading to greater effectiveness of maintenance spending and a reduction in unplanned mechanical breakdowns and guideway deficiencies. These impacts can be considered as two distinct benefit areas: travel time savings for passengers in terms of fewer canceled trips and fewer speed restrictions on tracks, and savings for the transit provider in unplanned maintenance and repair.

(4) Finally, potential safety benefits, in that greater effectiveness of dollars spent on maintenance can lead to improved vehicle and track condition and fewer safety hazards, and thus reduced injuries and fatalities related to incidents for which maintenance issues or poor conditions were a contributing factor.

These benefits have been presented by GAO and others almost exclusively in qualitative terms, presenting a challenge for estimating the quantitative benefits of this rule. Accordingly, a review of the academic literature in this area revealed few studies that attempted to quantify the benefits of transit asset management programs, as distinct from provider-specific implementation details or descriptions of best practices. Within the trade literature, one recent case study from the Bi-State Development Agency (St. Louis) presents results from a transit asset management program that has altered bus maintenance and replacement practices. The results include an increased "mean time between failures" for its bus fleet from 3,400 miles in 2000 to 22,000 in 2014, and bus lifespan targets that have gone from 12 years/600,000 miles to 15 years/825,000 miles. These outcomes are the equivalent of a roughly 85% decrease in the failure rate and a 25% increase in bus longevity (with associated capital cost savings).[40] Some of the practices that Bi-State put into place were (1) no longer performing major engine overhauls during the period right before a bus was to be retired from service, (2) making investments earlier in bus lifecycles, and (3) replacing key vehicles components proactively based on their average lifespans, rather than waiting for them to fail, which is more costly. Future plans include a condition-based (rather than mileage-based) assessment at the major component level. These actions all go beyond what is required by the TAM rule, but provide a useful real-world illustration of the point that the implementing actions associated with an asset management program are not additional costs but instead opportunities for significant lifecycle cost savings.

Case studies of this type provide compelling evidence of the benefits of transit asset management, though by their nature they make it difficult to control for exogenous factors and other initiatives implemented by the transit provider at the same time. Beyond these case studies, there is little to no hard data on the impacts of asset management on ultimate outcomes such as service quality, reliability, and ridership, which would also influence benefit estimates. Indeed, one recent academic review of the literature in this field noted that "efforts to quantify benefits of transit state of good repair have generally stopped short of linking asset condition with user impacts or ridership."[41] This is an unsurprising result given the relatively short period of time in which transit asset management practices have been studied.

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[40] Harnack, Leah. "Transit as an Economic Driver," *Mass Transit*, December 2014–January 2015, 10–15.

The literature on asset management for highway investments and pavement management is more mature and includes a few examples of quantified benefits. Many state DOTs use a quantitative model of highway system condition to forecast pavement deterioration. These systems allow planners to allocate funds in the most efficient way among capital and maintenance projects on the highway network to achieve the lowest overall lifecycle costs. A before-and-after study of the Iowa Department of Transportation's adoption of such a pavement management tool found that the system improved project selection, ultimately leading to benefits in the form of better pavement conditions on the roadway network for the same expenditure level. The value of the improved pavement condition was equivalent to roughly 3% of total construction spending during the 5-year "after" period studied.[42] A similar analysis with data from the Arizona Department of Transportation's pavement management program found that the asset management approach had improved pavement longevity by about 13.5%, with concomitant savings in the pavement budget.[43] While useful as benchmarks, the extent to which these findings are applicable to transit agencies is unclear, since transit agencies' key assets are vehicles, facilities, and guideway rather than pavement, and thus may exhibit different characteristics. However, the voluntary use of asset management programs by for-profit entities, such as utility companies and freight railroads, also strongly suggests that asset management programs allow the efficient selection of capital and maintenance projects that yield cost savings, at least over the longer term, that exceed the implementation costs of the asset management effort.[44]

Since FTA does not have a study on which to estimate the potential benefits of adopting asset management by transit providers, FTA employed a threshold analysis focused on areas where asset management is likely to have an impact by improving decision-making and targeting investments to achieve the highest return on the dollars invested. By implementing the requirements of the TAM rule, providers would develop policies and plans that direct funds toward investments to meet the goal of maximizing the lifespan of assets with timely rehabilitation and maintenance activities. These activities have the potential to reduce the rate of mechanical failures experienced by the transit industry. In 2013, transit agencies in urbanized areas reported to the NTD a total of 524,629 mechanical failures in revenue service, which collectively required an estimated 64.3 million hours of labor for inspection and maintenance.[45] At a loaded wage rate of $35.52 per hour (BLS, vehicle and equipment mechanics, interurban and rural bus transport), this equates to annual spending of just under $2.3 billion on unplanned mechanical breakdowns across the industry, in addition to the value of travel time delays that passengers experience during a breakdown.

Reducing the mechanical failures by just over 5,300 incidents (1.02 percent) through TAM-supported improvements in project selection would create maintenance cost savings that equal the subset of the rule's cost that FTA monetized ($23.2 million). (The threshold would be roughly 1.95% in the higher cost case using higher labor costs for contractor support.) In addition to the savings in maintenance expenditures, reduced mechanical failures also would reduce the delays in service, increasing reliability of transit services and yielding travel time savings.

FTA expects that the rule's requirements will significantly reduce potential safety risks, as assets are better maintained and likely to reduce safety hazards due the asset condition, as noted in the nexus between asset condition and safety in this final rule. In addition, transit asset management practices as outlined in the final rule identify list of projects that better serve the performance goals of FTA and the industry to improve safety, asset condition and system performance by allowing for improved cross-functional decision-making.

The requirements of this final rule will generate data for transit agencies to analyze over time showing trends in condition and performance, enabling them to better understand the relationship between their actions (expenditures) and outcomes (asset condition, safety, operations). Transit providers will select investments to meet their stated goals and targets. If the transit provider cannot meet the stated goals, it can explore the potential reasons for the gap between the actual performance and targeted performance. This may lead the transit provider to collect additional data, such as the cost of projects, with the intention of better understanding the underlying causes of why it is unable to attain the stated goal. Based on this analysis the transit provider may adjust the target, reprioritize its investments or make other changes in its processes to gain efficiencies. Through this asset management process of planning, executing, re-evaluating and revising, a transit provider can identify economies and best practices that result in better use of resources and improve performance. The performance targets may be achieved through increased efficiencies or shift in funding priorities. The transit asset management process can also help transit providers develop better estimates of its' systems needs to meet established targets.

In addition, the TAM plan will make a transit provider's policies, goals and performance targets, more transparent to the public and the legislative decision-makers. The performance reports required under this final rule show how well the agencies are performing against their established targets. Through increased transparency and accountability, it may be possible to make a better case for increased funding, resulting in improved performance over time and reducing the SGR backlog that has accumulated over the years.

Other Impacts

In 2012, $16.8 billion of capital expenditures were incurred by the transit agencies. As noted above, there is an estimated $85.9 billion transit SGR backlog. Given the size of capital expenditures, the size of the SGR backlog, and the potential benefits of adopting transit asset management systems and creating TAM plans, it is likely that economic impacts in excess of $100 million in a year could result from this final rule. However, FTA has no information on which to estimate the size of these impacts. As noted above, FTA believes that investing funds to improve the state of good repair of capital assets have important benefits. Experience of adopting asset management systems in capital intensive industries has demonstrated that significant gains over time are possible.

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[41] Patterson, L. and D. Vautin. "Evaluating User Benefits and Cost-Effectiveness for Public Transit State of Good Repair Investments," Transportation Research Board 94th Annual Meeting (2015).

[42] Smadi, O. "Quantifying the Benefits of Pavement Management," 6th International Conference on Managing Pavements (2004).

[43] Hudson, W.R., et al. "Measurable Benefits Obtained from Pavement Management," 5th International Conference on Managing Pavements (2001).

[44] See, for example, private sector case studies at *http://www.twpl.com/?page=CaseStudies.*

[45] The 2013 NTD data do not provide total hours for inspection and maintenance, only the number of mechanical failures. This analysis applies the average number of hours per failure from the most recent year for which both those data points are available (2007).

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), FTA has evaluated the likely effects of the requirements of this final rule on small entities, and has determined that the rule may have a significant economic impact on a substantial number of small entities.

The rule would impact roughly 2,700 small entities, most of whom are small government entities and small non-profit organizations that operate public transit services in non-urbanized areas. Compliance costs would vary according to provider size and complexity and the extent of current asset management practices. Costs are illustrated by an example calculation for a transit provider with 10 vehicles, for which compliance costs were estimated at $42,535 (over two years) for initial implementation and $9,816 per year for updates and reporting (from Table 11 example above). Over a period of years, this would represent a small share (less than 1%) of the operating budget that would be typical for a transit provider of that size. However, under the final rule, small entities who met the criteria for tier II designation and subrecipients under the Rural Area Formula Program, could participate in a group TAM plan sponsored by their State DOT or direct recipient. This would allow for some of the costs of implementation (such as developing analytical tools, prioritization project list, target setting and performance measures) to be borne by the group TAM plan sponsor or spread across a larger number of entities, reducing the cost for each.

Overall, while the rule would impact a substantial number of small entities, these effects would not be significant due to the low magnitude of the costs and the potential for offsetting benefits. Moreover, FTA has designed the rule to allow flexibility for small entities, including exemption from certain requirements and the option to participate in a group TAM plan. In addition, transit agencies would also see benefits from improved data-driven decision-making, including qualitative benefits to transparency and accountability and the potential for direct cost savings in maintenance and life-cycle costs of asset ownership.

Unfunded Mandates Reform Act of 1995

This rulemaking would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 109 Stat. 48). Under FTA's grant programs, the development of a TAM plan is eligible for funding as a planning or administrative expense, or capital expense under the SGR Grant Program authorized at 49 U.S.C. 5337.

Executive Order 13132 (Federalism)

This rulemaking has been analyzed in accordance with the principles and criteria established by Executive Order 13132 (Aug. 4, 1999). FTA has determined that the action does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this action does not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions. Moreover, consistent with Executive Order 13132, FTA has examined the direct compliance costs of the final rule on State and local governments and has determined that the collection and analysis of the data are eligible for Federal funding under FTA's grant programs.

Executive Order 12372 (Intergovernmental Review)

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this rulemaking.

Executive Order 13653

Preparing the United States for the Impacts of Climate Change, declares a policy that the Federal government must build on recent progress and pursue new strategies to improve the Nation's preparedness and resilience. The executive order directs Federal agencies to support climate-resilient investment, in part by identifying "opportunities to support and encourage smarter, more climate-resilient investments by states, local communities and tribes, including by providing incentives through agency guidance, grants, technical assistance performance measures, safety consideration and other programs." This rulemaking does not incorporate risk analysis as part of transit asset management. However, FTA does address the requirements of 1315(b) of MAP–21, in the Emergency Relief Program rule at 49 CFR part 602, by requiring transit agencies to evaluate reasonable alternatives, including change of location and addition of resilience/mitigation elements, for any damaged transit facility that has been previously repaired or reconstructed as a result of an emergency or major disaster. FTA also encourages transit providers to consider climate change resiliency in developing the investment prioritization in their TAM plan.

Paperwork Reduction Act (PRA)

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*; "PRA") and the OMB regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for the Information Collection Request abstracted below. FTA acknowledges that this final rule entails collection of information to implement the transit asset management requirements of 49 U.S.C. 5326. Specifically, a transit provider subject to the rule would do the following: (1) Develop and implement a TAM plan; (2) set performance targets; (3) submit an annual narrative and data report to the NTD; and (4) maintain required records.

Please note, the information provided below pertains to the requirements for the National TAM System final rule. This collection approval does not cover the proposed amendments to regulations for FTA's NTD at 49 CFR part 630, to conform to the reporting requirements for the National TAM System final rule. The amendments to the NTD are covered by a separate NTD Paperwork Reduction Act Justification Statement.

Respondents: Recipients and subrecipients of Chapter 53 funds that own, operate, or manage public transportation systems, including 284 tier I providers and roughly 2,714 tier II providers, or States or direct recipients that sponsor group TAM plans.

Estimated Annual Burden on Respondents

Tier I Providers—The initial costs for establishing new processes for collecting asset condition data; developing analytical processes, performance measures and targets; and reporting would be higher than the subsequent annual, triennial and quadrennial updates and would be incurred over a period of two years. The initial hours of burden for tier I providers are expected to be 431,424 hours in total for 284 transit providers, averaging to just over 1,519 hours per provider. The annual average recurring burden is 200,015 hours, averaging at 704 hours per transit provider. For the low case, the initial dollar cost of implementing the rule would be $24.45

million over two years and a recurring annual average cost of $9.87 million, averaging to $86,090 and $34,752 per provider respectively. For the high case, the initial dollar cost of implementing the rule would be $47.48 million over two years and a recurring annual average cost of $19.74 million, averaging to $167,187 and $69,505 per provider respectively. Additional costs for FTA exist but are not included here.

Tier II Providers—The initial burden for tier II providers is expected to be 679,166 hours in total for 754 plans to be developed by the direct recipients and/or group TAM plan sponsors, with an average of just over 900 hours per plan. The annual average recurring burden is 243,504 hours, averaging at 323 hours per TAM plan. For the low case, the initial dollar cost of implementing the rule would be $33.62 million over two years and a recurring annual average cost of $10.58 million, averaging to $44,594 and $14,028 per plan, respectively. For the high case, the initial dollar cost of implementing the rule would be $63.48 million over two years and a recurring annual average cost of $21.15 million, averaging to $84,187 and $28,057 per plan, respectively. Additional costs for FTA exist but are not included here.

Estimated Total Annual Burden: Tables 15 below shows the initial hours of burden and the dollar cost to the tier I and tier II transit providers to be incurred in the first two years of implementing the rule and the recurring annual average costs thereafter. The table below is based on the assumptions made for the level of effort and the loaded wage rates (wage rate adjusted to account for employer cost of benefits)[46] used for estimating the hours of burden and the cost of implementing the final rule. Hours and costs presented here are based on the assumptions detailed in the regulatory impact analysis above.

TABLE 15—ESTIMATED TOTAL ANNUAL PAPERWORK BURDEN

Agency size	Initial costs (total over two years)	Average annual recurring costs	Initial hours of burden (total over two years)	Average annual recurring hours of burden
Low Case:				
Tier I Providers	$24,449,578	$9,869,673	431,424	200,015
Tier II Providers	33,623,673	10,577,321	679,166	243,504
Total	58,073,251	20,446,994	1,110,590	443,519
High Case:				
Tier I Providers	47,481,030	19,739,346	431,424	200,015
Tier II Providers	63,477,346	21,154,643	679,166	243,504
Total	110,958,376	40,893,989	1,110,590	443,519

National Environmental Policy Act

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) requires Federal agencies to analyze the potential environmental effects of their proposed actions in the form of a categorical exclusion, environmental assessment, or environmental impact statement. This rulemaking is categorically excluded under FTA's environmental impact procedure at 23 CFR 771.118(c)(4), pertaining to planning and administrative activities that do not involve or lead directly to construction, such as the promulgation of rules, regulations, and directives. FTA has determined that no unusual circumstances exist in this instance, and that a categorical exclusion is appropriate for this rulemaking.

Executive Order 12630 (Taking of Private Property)

This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (March 15, 1998), Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (77 FR 27534) require DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies and activities on minority and/or low-income populations. The DOT Order requires DOT agencies to address compliance with the Executive Order and the DOT Order in all rulemaking activities. In addition, on July 17, 2014, FTA issued a Circular to update to its EJ Policy Guidance for Federal Transit Recipients (*www.fta.dot.gov/legislation_law/12349_14740.html*), which addresses administration of the EO and DOT Order.

FTA has evaluated this rule under the EO, the DOT Order, and the FTA Circular and has determined that this rulemaking will not cause disproportionately high and adverse human health and environmental effects on minority or low income populations.

Executive Order 12988 (Civil Justice Reform)

This action meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (February 5, 1996), Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this rulemaking under Executive Order 13045 (April 21, 1997), Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this final rule will not cause an environmental risk to health or safety that may disproportionately affect children.

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[46] BLS data show wages as 64.1% of total compensation, with benefits at 35.9%. Therefore, employees' wages are factored by 1.56 (100/64.1) to account for employer provided benefits.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this action under Executive Order 13175 (November 6, 2000), and believes that it will have substantial direct effects on one or more American Indian tribes and will impose substantial direct compliance costs on Indian tribal governments.

However, FTA has engaged in active consultation with American Indian tribes in the development of todays' rule, to the extent practicable and consistent with other FTA coordination efforts. In advance of publishing an NPRM, FTA sought comment from the transit industry, including tribes, on a wide range of topics pertaining to the new Public Transportation Safety Program and the requirements of the new transit asset management provisions authorized by MAP–21. FTA asked specific questions about how FTA should apply the new TAM and safety requirements to recipients of the section 5311 Tribal Transit Formula Program and Tribal Transit Discretionary Program. FTA did not receive any comments from American Indian tribes on the ANPRM, although several commenters argued that small transit systems operated by American Indian tribes should be subject to the same requirements as other small systems.

In addition to the ANPRM, FTA sought comment from the entire transit industry, including tribes, when it published the NPRM. During the NPRM comment period, FTA engaged with the industry through a number of outreach efforts, including a webinar for small providers held on October 27, 2015. FTA also held several listening session across the country including one at the National Rural Transit Assistance Program Annual Meeting, which historically has been well attended by a number of tribal representatives. FTA remains committed to continuing to provide outreach and technical assistance to American Indian tribes on compliance with the requirements of this rule.

FTA recognizes that developing an individual TAM plan, maintaining documentation and reporting requires that a TAM rule be flexible and scalable. This rule is scalable and flexible and provides several options to reduce the burden on small providers, including American Indian tribes.

Executive Order 13211 (Energy Effects)

FTA has analyzed this rulemaking under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that this action is not a significant energy action under the Executive Order, given that the action is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not requirement.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of FTA's dockets by the name of the individual submitting the comment or signing the comment if submitted on behalf of an association, business, labor union, or any other entity. You may review USDOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477–8.

Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of section 20019 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), which requires the Secretary of Transportation to prescribe regulations to establish a system to monitor and manage public transportation assets to improve safety and increase reliability and performance and to establish SGR performance measures. The authority is codified at 49 U.S.C. 5326.

Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 625

Public Transportation.

49 CFR Part 630

National Transit Database.

Issued this day of July 12, 2016, in Washington, DC, under authority delegated in 49 CFR 1.91.

Carolyn Flowers,

Acting Administrator, Federal Transit Administration.

For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 5326, 5335, and the delegations of authority at 49 CFR 1.91, FTA hereby amends Chapter VI of Title 49, Code of Federal Regulations as follows:

■ 1. Add part 625 to read as follows:

PART 625—TRANSIT ASSET MANAGEMENT

Subpart A—General Provisions

Sec.
625.1 Purpose.
625.3 Applicability.
625.5 Definitions.

Subpart B—National Transit Asset Management System

625.15 Elements of the National Transit Asset Management System.
625.17 State of good repair principles.

Subpart C—Transit Asset Management Plans

625.25 Transit Asset Management Plan requirements.
625.27 Group plans for transit asset management.
625.29 Transit asset management plan: horizon period, amendments, and updates.
625.31 Implementation deadline.
625.33 Investment prioritization.

Subpart D—Performance Management

625.41 Standards for measuring the condition of capital assets.
625.43 SGR performance measures for capital assets.
625.45 Setting performance targets for capital assets.

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625.53 Recordkeeping for transit asset management
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Appendix C to Part 625—Assets Included in National TAM System Provisions

Authority: Sec. 20019 of Pub. L. 112–141, 126 Stat. 707, 49 U.S.C. 5326; Sec. 20025(a) of Pub. L. 112–141, 126 Stat, 718, 49 CFR 1.91.

Subpart A—General Provisions

§ 625.1 Purpose.

This part carries out the mandate of 49 U.S.C. 5326 for transit asset management. This part establishes a National Transit Asset Management (TAM) System to monitor and manage public transportation capital assets to enhance safety, reduce maintenance costs, increase reliability, and improve performance.

§ 625.3 Applicability.

This part applies to all recipients and subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53 that own, operate, or manage capital assets used for providing public transportation.

§ 625.5 Definitions.

All terms defined in 49 U.S.C. Chapter 53 are incorporated into this part by reference. The following terms also apply to this part:

Accountable Executive means a single, identifiable person who has ultimate responsibility for carrying out the safety management system of a public transportation agency; responsibility for carrying out transit asset management practices; and control or direction over the human and capital resources needed to develop and maintain both the agency's public transportation agency safety plan, in accordance with 49 U.S.C. 5329(d), and the agency's transit asset management plan in accordance with 49 U.S.C. 5326.

Asset category means a grouping of asset classes, including a grouping of equipment, a grouping of rolling stock, a grouping of infrastructure, and a grouping of facilities. See Appendix A to this part.

Asset class means a subgroup of capital assets within an asset category. For example, buses, trolleys, and cutaway vans are all asset classes within the rolling stock asset category. See Appendix A to this part.

Asset inventory means a register of capital assets, and information about those assets.

Capital asset means a unit of rolling stock, a facility, a unit of equipment, or an element of infrastructure used for providing public transportation.

Decision support tool means an analytic process or methodology:

(1) To help prioritize projects to improve and maintain the state of good repair of capital assets within a public transportation system, based on available condition data and objective criteria; or

(2) To assess financial needs for asset investments over time.

Direct recipient means an entity that receives Federal financial assistance directly from the Federal Transit Administration.

Equipment means an article of nonexpendable, tangible property having a useful life of at least one year.

Exclusive-use maintenance facility means a maintenance facility that is not commercial and either owned by a transit provider or used for servicing their vehicles.

Facility means a building or structure that is used in providing public transportation.

Full level of performance means the objective standard established by FTA for determining whether a capital asset is in a state of good repair.

Group TAM plan means a single TAM plan that is developed by a sponsor on behalf of at least one tier II provider.

Horizon period means the fixed period of time within which a transit provider will evaluate the performance of its TAM plan.

Implementation strategy means a transit provider's approach to carrying out TAM practices, including establishing a schedule, accountabilities, tasks, dependencies, and roles and responsibilities.

Infrastructure means the underlying framework or structures that support a public transportation system.

Investment prioritization means a transit provider's ranking of capital projects or programs to achieve or maintain a state of good repair. An investment prioritization is based on financial resources from all sources that a transit provider reasonably anticipates will be available over the TAM plan horizon period.

Key asset management activities means a list of activities that a transit provider determines are critical to achieving its TAM goals.

Life-cycle cost means the cost of managing an asset over its whole life.

Participant means a tier II provider that participates in a group TAM plan.

Performance Measure means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets (*e.g.,* a measure for on-time performance is the percent of trains that arrive on time, and a corresponding quantifiable indicator of performance or condition is an arithmetic difference between scheduled and actual arrival time for each train).

Performance target means a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the Federal Transit Administration (FTA).

Public transportation system means the entirety of a transit provider's operations, including the services provided through contractors.

Public transportation agency safety plan means a transit provider's documented comprehensive agency safety plan that is required by 49 U.S.C. 5329.

Recipient means an entity that receives Federal financial assistance under 49 U.S.C. Chapter 53, either directly from FTA or as a subrecipient.

Rolling stock means a revenue vehicle used in providing public transportation, including vehicles used for carrying passengers on fare-free services.

Service vehicle means a unit of equipment that is used primarily either to support maintenance and repair work for a public transportation system or for delivery of materials, equipment, or tools.

Sponsor means a State, a designated recipient, or a direct recipient that develops a group TAM for at least one tier II provider.

State of good repair (SGR) means the condition in which a capital asset is able to operate at a full level of performance.

Subrecipient means an entity that receives Federal transit grant funds indirectly through a State or a direct recipient.

TERM scale means the five (5) category rating system used in the Federal Transit Administration's Transit Economic Requirements Model (TERM) to describe the condition of an asset: 5.0—Excellent, 4.0—Good; 3.0—Adequate, 2.0—Marginal, and 1.0—Poor.

Tier I provider means a recipient that owns, operates, or manages either (1) one hundred and one (101) or more vehicles in revenue service during peak regular service across all fixed route modes or in any one non-fixed route mode, or (2) rail transit.

Tier II provider means a recipient that owns, operates, or manages (1) one hundred (100) or fewer vehicles in revenue service during peak regular service across all non-rail fixed route modes or in any one non-fixed route mode, (2) a subrecipient under the 5311 Rural Area Formula Program, (3) or any American Indian tribe.

Transit asset management (TAM) means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation.

Transit asset management (TAM) plan means a plan that includes an inventory of capital assets, a condition assessment of inventoried assets, a decision support tool, and a prioritization of investments.

Transit asset management (TAM) policy means a transit provider's documented commitment to achieving and maintaining a state of good repair for all of its capital assets. The TAM policy defines the transit provider's TAM objectives and defines and assigns roles and responsibilities for meeting those objectives.

Transit asset management (TAM) strategy means the approach a transit provider takes to carry out its policy for

TAM, including its objectives and performance targets.

Transit asset management system means a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively, throughout the life cycles of those assets.

Transit provider (provider) means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. chapter 53 that owns, operates, or manages capital assets used in providing public transportation.

Useful life means either the expected life cycle of a capital asset or the acceptable period of use in service determined by FTA.

Useful life benchmark (ULB) means the expected life cycle or the acceptable period of use in service for a capital asset, as determined by a transit provider, or the default benchmark provided by FTA.

Subpart B—National Transit Asset Management System

§ 625.15 Elements of the National Transit Asset Management System.

The National TAM System includes the following elements:

(a) The definition of *state of good repair,* which includes objective standards for measuring the condition of capital assets, in accordance with subpart D of this part;

(b) Performance measures for capital assets and a requirement that a provider and a group TAM plan sponsor establish performance targets for improving the condition of capital assets, in accordance with subpart D of this part;

(c) A requirement that a provider develop and carry out a TAM plan, in accordance with subpart C of this part,

(d) Reporting requirements in accordance with subpart E of this part; and

(e) Analytical processes and decision support tools developed or recommended by FTA.

§ 625.17 State of good repair principles.

(a) A capital asset is in a state of good repair if it is in a condition sufficient for the asset to operate at a full level of performance. In determining whether a capital asset is in a state of good repair, a provider must consider the state of good repair standards under subpart D of this part.

(b) An individual capital asset may operate at a full level of performance regardless of whether or not other capital assets within a public transportation system are in a state of good repair.

(c) A provider's Accountable Executive must balance transit asset management, safety, day-to-day operations, and expansion needs in approving and carrying out a TAM plan and a public transportation agency safety plan.

Subpart C—Transit Asset Management Plans

§ 625.25 Transit Asset Management Plan requirements.

(a) *General.* (1) Each tier I provider must develop and carry out a TAM plan that includes each element under paragraph (b) of this section.

(2) Each tier II provider must develop its own TAM plan or participate in a group TAM plan. A tier II provider's TAM plan and a group TAM plan only must include elements under paragraphs (b)(1) through (4) of this section.

(3) A provider's Accountable Executive is ultimately responsible for ensuring that a TAM plan is developed and carried out in accordance with this part.

(b) *Transit asset management plan elements.* Except as provided in paragraph (a)(3) of this section, a TAM plan must include the following elements:

(1) An inventory of the number and type of capital assets. The inventory must include all capital assets that a provider owns, except equipment with an acquisition value under $50,000 that is not a service vehicle. An inventory also must include third-party owned or jointly procured exclusive-use maintenance facilities, passenger station facilities, administrative facilities, rolling stock, and guideway infrastructure used by a provider in the provision of public transportation. The asset inventory must be organized at a level of detail commensurate with the level of detail in the provider's program of capital projects;

(2) A condition assessment of those inventoried assets for which a provider has direct capital responsibility. A condition assessment must generate information in a level of detail sufficient to monitor and predict the performance of the assets and to inform the investment prioritization;

(3) A description of analytical processes or decision-support tools that a provider uses to estimate capital investment needs over time and develop its investment prioritization;

(4) A provider's project-based prioritization of investments, developed in accordance with § 625.33 of this part;

(5) A provider's TAM and SGR policy;

(6) A provider's TAM plan implementation strategy;

(7) A description of key TAM activities that a provider intends to engage in over the TAM plan horizon period;

(8) A summary or list of the resources, including personnel, that a provider needs to develop and carry out the TAM plan; and

(9) An outline of how a provider will monitor, update, and evaluate, as needed, its TAM plan and related business practices, to ensure the continuous improvement of its TAM practices.

§ 625.27 Group plans for transit asset management.

(a) *Responsibilities of a group TAM plan sponsor.* (1) A sponsor must develop a group TAM plan for its tier II provider subrecipients, except those subrecipients that are also direct recipients under the 49 U.S.C. 5307 Urbanized Area Formula Grant Program. The group TAM plan must include a list of those subrecipients that are participating in the plan.

(2) A sponsor must comply with the requirements of this part for a TAM plan when developing a group TAM plan.

(3) A sponsor must coordinate the development of a group TAM plan with each participant's Accountable Executive.

(4) A sponsor must make the completed group TAM plan available to all participants in a format that is easily accessible.

(b) *Responsibilities of a group TAM plan participant.* (1) A tier II provider may participate in only one group TAM plan.

(2) A tier II provider must provide written notification to a sponsor if it chooses to opt-out of a group TAM plan. A provider that opts-out of a group TAM plan must either develop its own TAM plan or participate in another sponsor's group TAM plan.

(3) A participant must provide a sponsor with any information that is necessary and relevant to the development of a group TAM plan.

§ 625.29 Transit asset management plan: horizon period, amendments, and updates.

(a) *Horizon period.* A TAM plan must cover a horizon period of at least four (4) years.

(b) *Amendments.* A provider may update its TAM plan at any time during the TAM plan horizon period. A provider should amend its TAM plan whenever there is a significant change to the asset inventory, condition assessments, or investment prioritization that the provider did not reasonably anticipate during the development of the TAM plan.

(c) *Updates.* A provider must update its entire TAM plan at least once every four (4) years. A provider's TAM plan update should coincide with the planning cycle for the relevant Transportation Improvement Program or Statewide Transportation Improvement Program.

§ 625.31 Implementation deadline.

(a) A provider's initial TAM plan must be completed no later than two years after October 1, 2016.

(b) A provider may submit in writing to FTA a request to extend the implementation deadline. FTA must receive an extension request before the implementation deadline and will consider all requests on a case-by-case basis.

§ 625.33 Investment prioritization.

(a) A TAM plan must include an investment prioritization that identifies a provider's programs and projects to improve or manage over the TAM plan horizon period the state of good repair of capital assets for which the provider has direct capital responsibility.

(b) A provider must rank projects to improve or manage the state of good repair of capital assets in order of priority and anticipated project year.

(c) A provider's project rankings must be consistent with its TAM policy and strategies.

(d) When developing an investment prioritization, a provider must give due consideration to those state of good repair projects to improve that pose an identified unacceptable safety risk when developing its investment prioritization.

(e) When developing an investment prioritization, a provider must take into consideration its estimation of funding levels from all available sources that it reasonably expects will be available in each fiscal year during the TAM plan horizon period.

(f) When developing its investment prioritization, a provider must take into consideration requirements under 49 CFR 37.161 and 37.163 concerning maintenance of accessible features and the requirements under 49 CFR 37.43 concerning alteration of transportation facilities.

Subpart D—Performance Management

§ 625.41 Standards for measuring the condition of capital assets.

A capital asset is in a state of good repair if it meets the following objective standards—

(a) The capital asset is able to perform its designed function;

(b) The use of the asset in its current condition does not pose an identified unacceptable safety risk; and

(c) The life-cycle investment needs of the asset have been met or recovered, including all scheduled maintenance, rehabilitation, and replacements.

§ 625.43 SGR performance measures for capital assets.

(a) *Equipment: (non-revenue) service vehicles.* The performance measure for non-revenue, support-service and maintenance vehicles equipment is the percentage of those vehicles that have either met or exceeded their ULB.

(b) *Rolling stock.* The performance measure for rolling stock is the percentage of revenue vehicles within a particular asset class that have either met or exceeded their ULB.

(c) *Infrastructure: rail fixed-guideway, track, signals, and systems.* The performance measure for rail fixed-guideway, track, signals, and systems is the percentage of track segments with performance restrictions.

(d) *Facilities.* The performance measure for facilities is the percentage of facilities within an asset class, rated below condition 3 on the TERM scale.

§ 625.45 Setting performance targets for capital assets.

(a) *General.* (1) A provider must set one or more performance targets for each applicable performance measure.

(2) A provider must set a performance target based on realistic expectations, and both the most recent data available and the financial resources from all sources that the provider reasonably expects will be available during the TAM plan horizon period.

(b) *Timeline for target setting.* (1) Within three months after the effective date of this part, a provider must set performance targets for the following fiscal year for each asset class included in its TAM plan.

(2) At least once every fiscal year after initial targets are set, a provider must set performance targets for the following fiscal year.

(c) *Role of the accountable executive.* A provider's Accountable Executive must approve each annual performance target.

(d) *Setting performance targets for group plan participants.* (1) A Sponsor must set one or more unified performance targets for each asset class reflected in the group TAM plan in accordance with paragraphs (a)(2) and (b) of this section.

(2) To the extent practicable, a Sponsor must coordinate its unified performance targets with each participant's Accountable Executive.

(e) *Coordination with metropolitan, statewide and non-metropolitan planning processes.* To the maximum extent practicable, a provider and Sponsor must coordinate with States and Metropolitan Planning Organizations in the selection of State and Metropolitan Planning Organization performance targets.

Subpart E—Recordkeeping and Reporting Requirements for Transit Asset Management

§ 625.53 Recordkeeping for transit asset management.

(a) At all times, each provider must maintain records and documents that support, and set forth in full, its TAM plan.

(b) A provider must make its TAM plan, any supporting records or documents performance targets, investment strategies, and the annual condition assessment report available to a State and Metropolitan Planning Organization that provides funding to the provider to aid in the planning process.

§ 625.55 Annual reporting for transit asset management.

(a) Each provider must submit the following reports:

(1) An annual data report to FTA's National Transit Database that reflects the SGR performance targets for the following year and condition information for the provider's public transportation system.

(2) An annual narrative report to the National Transit Database that provides a description of any change in the condition of the provider's transit system from the previous year and describes the progress made during the year to meet the performance targets set in the previous reporting year.

(b) A Sponsor must submit one consolidated annual data report and one consolidated annual narrative report, as described in paragraph (a)(1) and (2) of this section, to the National Transit Database on behalf of its participants.

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Appendix A to Part 625—Asset Categories, Asset Classes, and Individual Assets

EXAMPLE of asset categories, asset classes, and individual assets:

ASSET CATEGORY		ASSET CLASS	INDIVIDIUAL ASSET
	Equipment	Construction	Crane Prime Mover
		Maintenance	Vehicle Lift Track Geometry Car
		Non-revenue Service Vehicles	Tow Truck Emergency Response Vehicle Supervisor Car Track Maintenance Vehicle
	Rolling Stock	Buses	40 Foot Bus 60 Foot Articulated Bus
		Other Passenger Vehicles	Cutaway Van Minivan
		Railcars	Light Rail Vehicle Commuter Rail Locomotive
		Ferries	Ferry Boat
	Infrastructure	Systems	Signal Substation
		Fixed Guideway	Track Segment Ballast Segment Exclusive Bus Right-of-Way Segment
		Power	Catenary Segment Third Rail Segment
		Structures	Bridge Tunnel Elevated Structure
	Facilities	Support Facilities	Maintenance Facilities Administrative Facilities
		Passenger Facilities	Rail Terminals Bus Transfer Stations
		Parking Facilities	Parking Garages Park-and-Ride Lots

Appendix B to Part 625—Relationship Amongst SGR Performance Measures, SGR Definition, and SGR Principles

EXAMPLE Relationship amongst SGR performance measures, SGR definition, and SGR principles:

(a) A tier I provider has a TAM asset inventory containing, in total across all modes, over 150 revenue vehicles in peak revenue service, no rail fixed guideway, multiple passenger and exclusive use maintenance facilities, and various pieces of equipment over $50,000. Their asset inventory is itemized at the level of detail they use in their capital program of projects; it also includes capital assets they do not own but use. The provider conducts condition assessments on those assets in its inventory for which it has direct financial responsibility. The results of the condition assessment indicate that there is an identified unacceptable safety risk in the deteriorated condition of one of their non-revenue service vehicles, but that the non-revenue service vehicles are being used as designed. The condition assessment results show the provider that one non-revenue service vehicle is not in SGR.

(b) The condition assessment results also inform the investment prioritization process, which for this provider is a regression analysis in a spreadsheet software program. The provider's criteria, as well as their weightings, are locally determined to produce the ranked list of programs and projects in their investment prioritization. The provider batches its projects by low, medium or high priority, identifying in which funding year each project will proceed. The provider has elected to use the ULB defaults, provided by FTA, for each of their modes until such time as they have resources and expertise to develop customized ULBs.

(c) The provider separates assets within each asset category by class to determine their current performance measure metric. For example, the equipment listed in its TAM asset inventory includes HVAC equipment and service vehicles; however, the SGR performance metric for the equipment category only requires the non-revenue vehicle metrics. Thus, the provider measures only non-revenue vehicles that exceed the default ULB for the modes they own, operate, or manage. This metric is the baseline the provider uses to determine its target for the forthcoming year.

(d) The provider's equipment baseline, its investment priorities that show minimal funding for non-revenue vehicles over the next 4 years, and its TAM policies, strategies and key asset management activities are used to project its target for the equipment category. Since one of its non-revenue service vehicles indicated an unacceptable safety risk, it is elevated in the investment prioritization for maintenance or replacement. The provider's target may indicate a decline in the condition of their equipment overall, but it addresses the unacceptable safety risk as an immediate priority.

(e) The cyclic nature of investment prioritization and SGR performance target setting requires the provider to go through the process more than once to settle on the balance of priorities and targets that best reflects its local needs and funding availability from all sources. The provider's accountable executive has ultimate responsibility for accepting and approving the TAM plan and SGR targets. The targets are then submit to the NTD and shared with the provider's planning organization. The narrative report, which describes the SGR performance measure metrics, is also submitted to the NTD.

Appendix C to Part 625—Assets Included in National TAM System Provisions

Table 1—Assets Included in National TAM System Provisions

MAP-21 Asset Category	TAM Plan Element		SGR Performance Measure 625.43 (a) – (d)
	Asset inventory 625.15 (c)(1)	Condition assessment 625.15 (c)(2)	
Equipment	All non-revenue service vehicles and equipment over $50,000 used in the provision of public transit, except third-party equipment assets.	Only inventoried equipment with direct capital responsibility, no third party assets	Only non-revenue service vehicles with direct capital responsibility.
Rolling Stock	All revenue vehicles used in the provision of public transit	Only revenue vehicles with direct capital responsibility	Only revenue vehicles with direct capital responsibility, by mode
Infrastructure	All guideway infrastructure used in the provision of public transit	Only guideway infrastructure with direct capital responsibility	Only fixed rail guideway with direct capital responsibility
Facilities	All passenger stations and all exclusive-use maintenance facilities used in the provision of public transit, excluding bus shelters	Only passenger stations and exclusive-use maintenance facilities with direct capital responsibility, excluding bus shelters	1- Maintenance and Administrative facilities with direct capital responsibility, 2- Passenger stations (buildings) and Parking facilities with direct capital responsibility

Table 2—*EXAMPLE* of Multiple SGR Performance Targets for a Sample Fleet

MAP-21 Asset Category	Asset Class	Performance Targets
Equipment	one non-revenue service vehicle type (automobile)	**Total 1- Equipment Performance Target:** 1- supervisor car
Rolling Stock	3 vehicle types (cutaway, van, 30 ft. bus)	**Total 3- Rolling Stock Performance Targets:** 1- cutaway, 2- van, 3- 30 ft. bus
Infrastructure	no track	**Total 0 - Infrastructure Performance Targets:**
Facilities	2 exclusive-use maintenance garages, 1 administrative office, and 3 passenger stations	**Total - 2 Facilities Performance Target:** 1- maintenance and administrative facilities 2- passenger and parking facilities

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PART 630—NATIONAL TRANSIT DATABASE

■ 2. The authority citation for part 630 is revised to read as follows:

Authority: 49 U.S.C. 5335.

■ 3. In § 630.3, amend paragraph (c) by revising the definitions of "Applicant" and "Reporting entity" to read as follows:

§ 630.3 Definitions.

* * * * *

(c) * * *

Applicant means an entity seeking Federal financial assistance under 49 U.S.C. chapter 53.

* * * * *

Reporting entity means an entity required to provide reports as set forth in the reference documents.

* * * * *

■ 4. Amend § 630.4 by revising paragraph (a) to read as follows:

§ 630.4 Requirements.

(a) *National Transit Database Reporting System.* Each applicant for and beneficiary of Federal financial assistance under 49 U.S.C. chapter 53 must comply with the applicable requirements of 49 U.S.C. 5335, as set forth in the reference documents.

* * * * *

■ 5. Revise § 630.5 to read as follows:

§ 630.5 Failure to report data.

Failure to report data in accordance with this part may result in the noncompliant reporting entity being ineligible to receive any funding under 49 U.S.C. chapter 53, directly or indirectly, until such time as a report is filed in accordance with this part.

[FR Doc. 2016–16883 Filed 7–25–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2014–0006 and FTA–2015–0029]

National Transit Database: Capital Asset Reporting

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice; Response to comments.

SUMMARY: This notice finalizes the expansion of the Federal Transit Administration's (FTA) National Transit Database (NTD) Asset Inventory reporting requirements.

DATES: The reporting requirements will be optional in report year 2017 with full implementation required in report year 2018.

FOR FURTHER INFORMATION CONTACT: Maggie Schilling, National Transit Database Program Manager, FTA Office of Budget and Policy, (202) 366–2054 or *margaret.schilling@dot.gov.*

SUPPLEMENTARY INFORMATION:

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A. Background
B. Response to Comments on Expansion of Capital Asset Reporting
C. Overview of Final Requirements

A. Background

On August 19, 2014, FTA published a **Federal Register** notice (initial notice) (Docket No. FTA–2014–0006, 79 FR 49146) for comment on proposed revisions to the NTD Reporting Manual. The notice described various proposed changes to the NTD annual module, including a revised capital asset inventory reporting module for urban reporters. In response to the initial notice, commenters requested that FTA postpone the implementation of the expanded asset inventory until after the publication of the Transit Asset Management Notice of Proposed Rulemaking. FTA agreed with this request and a second **Federal Register** noticed was published on November 18, 2015 (Docket No. FTA–2015–0029, 80 FR 72137). The second notice responded to comments received in response to proposals in the initial notice. In addition, in response to comments, the second notice proposed changes to FTA's initial proposed reporting requirements, and requested comment on these proposed changes. he comment period for this second notice closed on January 19, 2016.

The proposed changes to the NTD Reporting Manual stem from amendments to Federal transit law made by the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, July 6, 2012), which require recipients of chapter 53 funds to report to the NTD any information relating to a transit asset inventory or condition assessment conducted by the recipient. (49 U.S.C. 5335(c)). Currently, the NTD only collects asset inventory information on revenue vehicles and summary counts for other asset categories, such as maintenance facilities and fixed guideway. There are some assets, such as signal or communications systems, for which NTD collects no data. In the both the initial and second notice, FTA proposed to collect additional asset inventory data to meet the asset inventory and condition reporting requirements at 49 U.S.C. 5335(c).

In accordance with the Paperwork Reduction Act, FTA included in the second notice a summary of the burden hours and costs for this enhanced reporting requirement. FTA estimated that the initial year burden nationally would be 18,636 hours for urban reporters and 13,097 hours for state and rural reporters, or 31,097 hours in total. This represents a 10.5% increase to the total NTD reporting requirement in the first year. FTA estimated the burden in subsequent years at 9,318 hours for urban reporters and 6,549 for state and rural reporters, for a total of 15,867 hours, representing a 5.2% increase to the total NTD reporting requirement.

B. Response to Comments on Expansion of Capital Asset Reporting

The comment period for the second notice closed on January 19, 2016. FTA received 25 comments. Following is a summary of the comments received with FTA responses.

Comment: FTA received a number of comments expressing concern over the additional burden imposed by expanding the asset inventory. Twenty commenters stated that the proposal was too burdensome. Thirteen commenters expressed concern that the additional reporting burden may divert resources away from transit service provision. Eight commenters felt the burden estimates provided by FTA were 'understated'.

Response: The final Transit Asset Management (TAM) rule, also published in today's **Federal Register**, requires all agencies to (1) create and maintain an asset inventory along with condition assessments, and (2) develop performance targets. FTA calculated a paperwork burden estimate for those tasks and included that estimate in the TAM rulemaking process. The NTD burden estimate provided in the second NTD notice assumes that an agency will already have an asset inventory in place as part of its compliance with the TAM rule and, therefore, only includes the time and costs estimated to enter existing asset inventory information into the NTD reporting system. In some cases, modifications to existing data may be necessary to enter this information into the NTD. The burden estimates provided in the second notice take into account small modifications of existing information in the asset inventories required by the TAM rule for reporting in the standard formats established by the NTD.

In calculating the burden estimate for NTD reporting, FTA asked several agencies to enter their existing asset inventory information into the proposed format and report the time necessary to complete this task. Three agencies completed an entire report and their experience with the new reporting requirements served as the foundation for the final estimates. A 'per field' reporting time was calculated and then multiplied out over the estimated data fields expected nationally to create a final burden estimate.

FTA remains committed to implementing reasonable data reporting requirements, while also meeting the requirements in the law for reporting asset condition information. In response to the initial round of comments on the asset inventory, FTA made several modifications to reduce the overall reporting burden, including removing replacement cost information for all asset types. FTA believes that this asset inventory fulfills the MAP–21 update to 49 U.S.C. 5335(c) that recipients report asset inventory and condition assessment information to the NTD and allows meaningful data analysis on the national capital needs of the transit industry. While FTA recognizes that the proposed changes would result in an increase over the current reporting requirements, the highest burden would exist in the first year of start-up reporting. Once an asset has been entered into the inventory module, the information would be pre-populated for each subsequent year. Reporters only would be responsible for providing annual updates to new or retired asset inventory items in subsequent years.

Comment: An additional area of concern was related to the new reporting requirements for recipients of funding under 49 U.S.C. 5310 (section 5310). Nine commenters stated that reporting for section 5310 recipients should be limited or eliminated entirely. Ten commenters felt that any reporting done on behalf of section 5310 recipients should be done at the designated recipient or State level rather than the subrecipient level to minimize the burden of this new reporting. This same group of commenters suggested that only vehicles used in public transit and, preferably only vehicles purchased with federal money, should be reported. Five commenters requested that performance targets and reporting should be removed for section 5310 recipients.

Response: FTA is committed to developing requirements that are mindful of the burden for small transit providers. FTA understands that direct reporting may prove too difficult for small section 5310 recipients. In order to minimize this burden, FTA concurs with the comment that reporting on the assets for section 5310 recipients should be performed at the designated recipient or State level. The reporting guidance will be updated to reflect this change.

In response to the applicability of reporting for section 5310 reporters: The NTD asset inventory requirements will mirror the reporting requirements established by the Transit Asset Management rule. The final reporting requirements for the National TAM System apply to all chapter 53 recipients or subrecipients who own, operate, or manage public transportation capital assets. FTA currently requires NTD reports from recipients of funds under the Urbanized Area Formula Program (49 U.S.C. 5307 or section 5307) and the Rural Area Formula Program (49 U.S.C. 5311 or section 5311). As such, this new rule replaces references to section 5307 and section 5311 recipients with references to recipients and subrecipients of chapter 53 funds. This change will require recipients and subrecipients of other FTA grant programs, such as the section 5310 formula program for the enhanced mobility of seniors and individuals with disabilities, who are not also receiving funds under section 5307 or section 5311, to start reporting to the NTD. FTA will not apply existing NTD reporting requirements to all recipients of chapter 53 funds. FTA will apply only the reporting requirements proposed under the National TAM System to those transit providers that do not currently report.

Comment: Eleven commenters requested a reduced set of reporting requirements for section 5311 recipients. This group of commenters asked to have required reporting reduced below current NTD reporting levels for revenue vehicles.

Response: The revenue vehicle inventory required for section 5311 recipients is already a greatly reduced version of vehicle inventory required for urban reporters. In the expanded asset inventory, FTA is only requesting one additional data element for revenue vehicles from section 5311 recipients: A useful life benchmark for each fleet, which is necessary for calculating the performance measures under the TAM rule. Additionally, FTA's research indicates that no exclusively rural subrecipients provide rail fixed guideway service, so rural subrecipients will not need to report the slow zones metric. For the other two performance measures, facility conditions and service vehicles, FTA is proposing to collect only the minimum data required for these measures.

Comment: Fifteen commenters stated that the proposed inventory should not include contractor assets. One transit agency specifically stated that condition assessments and replacement cost information should not be required for any contractor-owned assets.

Response: FTA understands the difficulty of providing detailed information on contractor assets. However, the NTD plans to follow the decision codified in the final TAM rule that a TAM Plan should, to a certain extent, take into account third party assets used in the provision of public transportation service. The final rule requires that all assets used in the provision of transit service be included in a transit providers' asset inventory, including those assets that are owned, operated, or maintained by a third party or were procured jointly. However, agencies would only be responsible for conducting condition assessments, establishing performance targets, and reporting these condition assessments and performance targets to the NTD for capital assets for which it has direct capital responsibility. A transit provider has direct capital responsibility for an asset if that asset has been or currently is included in its program of capital projects. A transit provider also has direct capital responsibility for an asset if it can reasonably anticipate that the asset will be included in its program of capital projects during the TAM plan horizon period. Once an asset becomes a part of a transit provider's capital program, the transit provider must comply with the final rule's condition assessment, target setting, and investment prioritization requirements.

NTD reporters currently are required to report a limited amount of information on non-dedicated or contractor-owned fleets. In the case of non-dedicated contractor-owned vehicle fleets, the NTD asks reporters to provide information on a 'representative vehicle' to the current revenue vehicle inventory. The NTD asset inventory would contain the same requirement moving forward.

FTA also requires that agencies provide basic information for all passenger stations that they use for transit service regardless of ownership or capital responsibility. Additionally, basic inventory information is required for all track and guideway regardless of ownership or capital responsibility. Inventory information for maintenance and administrative facilities are only reportable if the agency has full or partial capital replacement responsibility for the facility.

Comment: Twelve commenters requested the removal of service equipment from the NTD Asset Inventory.

Response: In order to best align the NTD asset inventory with the TAM rule reporting requirements, FTA believes it is appropriate to keep an inventory of 'service equipment' in the NTD. This information will provide verification of the TAM performance targets and performance against those targets. In addition, non-revenue service vehicles and equipment represent a large capital expense for some agencies. Including a basic inventory of these vehicles and equipment in the NTD will provide additional clarity on the state of good repair backlog for the transit industry.

The final TAM rule requires transit providers to report the percentage of non-revenue, support-service and maintenance vehicles that have met or exceeded their useful life benchmark. This is the identified SGR performance measure for equipment. Non-revenue service vehicles are an easily understood and readily identifiable category of equipment, and the age-based performance measure is the most simple and straightforward performance measure available.

Comment: A number of comments related to consistency between the NTD's proposed asset inventory and other FTA reporting requirements and/or requests. Three commenters suggested that the requirements and organization of data in the NTD asset inventory should mirror those of the Transit Economic Requirement Model (TERM). Five commenters stated that the assets reported to the NTD should not necessarily be subject to the Transit Asset Management rule requirements.

Response: FTA developed the proposed asset inventory with the TERM requirements in mind. While the requirements are not identical, the proposed NTD inventory is intended to supplement the data currently available through annual surveys for TERM. In some cases, the data collected through this NTD inventory will replace estimated data in TERM to provide a more accurate picture of the state of the nation's transit assets.

FTA expects that the assets collected through this NTD inventory will often only be a subset of the assets a transit provider will collect to create their TAM plan. This inventory is intended to provide high level information on major asset classes. While an agency may find this level of granularity to be sufficient, FTA does not intend to limit an agency's ability to create a more detailed inventory to inform its TAM plan.

Comment: A number of commenters expressed concern over the implementation timeline. Ten commenters asked that the final implementation be postponed. The suggested timelines ranged from 'after the final Transit Asset Management (TAM) rule' to up to two years after the TAM rule was finalized.

Response: FTA shares the concern that reporters may need additional time to complete these new reporting requirements. Taking into consideration the feedback from commenters, FTA will postpone final implementation of the majority of asset inventory reporting requirements until report year 2018, beginning in September 2018. FTA will allow for optional reporting in report year 2017 (beginning in September 2017). The NTD asset inventory will auto-populate information each year based on the assets entered in the previous year's report. The optional reporting year in report year 2017 will give agencies two reporting cycles to enter all reportable assets into the NTD system. FTA will also consider additional requests from individual transit systems for an extension of the reporting requirements beyond 2018 on a case-by-case basis, in accordance with the existing NTD policies for such requests.

While asset reporting will be postponed, FTA will require agencies to provide their performance targets for the four performance measures required by the Transit Asset Management rule. The TAM rule requires agencies to report their performance targets three months after the effective date of the final rule. The NTD system will be the reporting tool used to capture these targets. The NTD system will allow reporting of these targets by October 2016. FTA understands that the targets provided in October 2016, and in the first few years of reporting, will necessarily by preliminary targets. However, FTA is bound by the statutory provision requiring targets within three months of the final rule.

Comment: Three commenters requested FTA to engage in additional collaboration with the industry to develop asset inventory reporting requirements.

Response: FTA engaged a number of industry professionals and transit agencies during the development of these reporting requirements. Considerable research was conducted on the current state of asset inventory practices across the industry. FTA contracted with a major engineering firm, AECOM, which has been involved in developing asset inventories at numerous transit systems, to assist FTA in organizing the development of the proposed NTD asset inventory requirements. Additionally, nine (9) transit agencies were engaged to provide direct testing and feedback of the proposed data collection requirements, and FTA made significant revisions to the proposed data collection requirements in response to that feedback. FTA has also provided two opportunities for the transit industry to comment on these requirements through the **Federal Register** notice and comment process, and has continued to revise and refine the data collection requirements in response to these comments. Finally, FTA held two informational webinars as well as several presentations of this proposal at industry conferences and events, where FTA also received useful feedback to improve the proposed data collection. Based on these efforts, FTA believes it has refined the data collection requirements to collect the minimum data necessary in the least-burdensome way, while also satisfying the mandatory statutory requirements for improved asset inventory and asset condition information.

Comment: FTA received a number of comments related to the dollar thresholds for reportable assets. Several commenters asked for clarity on the $10,000 threshold for reportable assets. Eleven commenters suggested that assets should only be reportable if they have an initial value of $50,000 or more.

Response: FTA did not provide any dollar thresholds in the asset inventory reporting requirements and does not intend to set a threshold for reportable assets in this inventory. In most cases, the assets requested in the asset inventory are in excess of $50,000 in value. In a few cases some assets may fall below this threshold, such as vehicles or sedans used by transit agencies for their staff or demand response services. In all cases, however, the reporting requirements are clear as to which assets must be included—*i.e.,* to include all buildings, or to include all road-worthy revenue service vehicles—making a dollar threshold unnecessary.

Comment: Five commenters requested a bulk upload feature to facilitate the reporting of this information.

Response: FTA intends to develop bulk upload capabilities for the NTD reporting system. FTA hopes to have this feature in place in time for optional reporting in the fall of 2017.

Comment: One commenter asked FTA to clarify that reporting will not be uniform across modes, specifically that some fields may be left blank if they do not apply to a mode.

Response: FTA concurs that there will be instances where some data requested will not apply to a specific mode. FTA will ensure that there is additional clarity in the reporting guidance to address this request.

Comment: A number of commenters asked FTA to clarify that the receipt of funds pursuant to 49 U.S.C. 5339 (section 5339) would not impact the NTD asset inventory reporting requirements.

Response: FTA believes this problem was resolved by the implementation of the FAST Act. In any event, FTA clarifies that if a State is a direct recipient of section 5339 funds and passes those funds through to subrecipients, this does not create an obligation for the State to report to FTA on behalf of those subrecipients of section 5339 funds if those subrecipients are already directly reporting to the NTD as direct recipients of section 5307 funds.

Comment: One commenter requested guidance on calculating a useful life benchmark (ULB) that is not based on accounting depreciation standards.

Response: The calculation of a useful life benchmark may vary considerably between transit operators based on original equipment specifications, operating environment and maintenance or capital replacement schedules. Due to these variations, FTA intends to leave the calculation of such a metric up to the individual providers. To facilitate reporting, FTA will provide a ULB estimate based on the Transit Economic Requirements Model (TERM) depreciation curves in the NTD reporting system. These estimates will also be available in the reporting manual. The ULB estimate provided by NTD will be the point at which a vehicle reaches 2.5 in TERM.

Comment: One commenter requested clarification on the relationship between the A–50 and A–55 forms in the new asset inventory.

Response: The A–50 and A–55 forms collect information on the guideway and track elements, respectively. The A–50 contains information about guideway elements including guideway type (at-grade ballast, elevated/concrete etc.) and power/signal elements including substations and third rail. The A–55 collects information on the track including linear feet of tangent and curve track as well as crossovers and turnouts.

Comment: A number of commenters submitted feedback on the requirements for the TAM Notice of Proposed Rulemaking under this notice. In general, the comments related to the proposed TAM Plan elements or granularity of data required for the TAM plan.

Response: As these comments are not directly applicable to the NTD Asset Inventory requirements they have not been further summarized or addressed in this notice.

C. Final Reporting Requirements

The finalized reporting requirements can be found on the NTD Web site at: *www.transit.dot.gov/ntd.*

The reporting requirements will be optional in report year 2017 with full implementation required in report year 2018. An overview of these requirements is as follows:

1. *Administrative and Maintenance Facilities.* Reported for all facilities for which an agency has a capital responsibility. Collects information on administrative and maintenance facilities used to supply transit service, including facility name, street address, square footage, year built or substantially reconstructed, and primary transit mode supported. Also includes a condition assessment at least once every three years for facilities for which an agency has capital replacement responsibility.

2. *Passenger and Parking Facilities.* Reported for all passenger and parking facilities used in transit service. Collects information on passenger facilities and passenger parking facilities used in the provision of transit service, including facility name, street address, square footage and number of parking spaces, year built or substantially reconstructed, primary mode and percent of capital responsibility. Also includes a condition assessment at least once every three years for facilities for which an agency has capital replacement responsibility.

3. *Fixed Guideway.* Reported for all fixed guideway used in transit service. Collects data on linear guideway assets and power and signal equipment, including the length of specific types of guideway and corresponding equipment, reported as network totals by mode and operating agreement. The data includes quantity, expected service years, date of construction or major rehabilitation (within a ten year window) and percent of capital responsibility.

4. *Track.* Reported for all track used in transit service. Collects data on track assets, including length and total number of track special work, reported as network totals by rail mode and operating agreement. The data includes expected service years, date of construction or major rehabilitation and percent of capital responsibility.

5. *Revenue Vehicles.* Reporting requirements remain the same for urban/full and rural/reduced reporters with the addition of a useful life benchmark for each vehicle fleet. Section 5310 recipients now report according to the rural/reduced requirements.

6. *Service Vehicles.* Reported for all non-revenue service vehicles for which an agency has capital replacement responsibility. Collects data on service vehicles that support transit service delivery, maintain revenue vehicles, and perform administrative activities. The data includes quantity, expected service life, and year of manufacture. Also includes a useful life benchmark for each vehicle type.

7. *Transit Asset Management Performance Metrics.* The metrics included in the Transit Asset Management rule are reported annually to the NTD:

(a) *Equipment-Service Vehicles.* The performance measure for non-revenue, support and maintenance vehicles is the percentage of vehicles that have met or exceeded their useful life benchmark (ULB). To determine the ULB, a Transit Provider may either use the default ULB established by FTA or a ULB established by the Transit Provider in consideration of local conditions and usage and approved by FTA. The NTD system will calculate annual performance based on the manufacturer's age information that is entered into the vehicle inventory. Reporters are required to provide one target for the percentage of classification of non-revenue vehicle that have met or exceeded their useful life benchmark for each service vehicle category.

(b) *Rolling Stock.* The performance measure for rolling stock is the percentage of revenue vehicles within a particular asset class that have either met or exceeded their useful life benchmark (ULB). To determine the ULB, a recipient may either use the default ULB established by FTA or a ULB established by the recipient in consideration of local conditions and usage and approved by FTA. Recipients will report one target and useful life benchmark for each revenue vehicle classification. The NTD system will calculate annual performance based on the date of manufacture information entered into the vehicle inventory.

(c) *Rail fixed Guideway Infrastructure* (track, signals, and systems). The performance measure for rail fixed guideway infrastructure is the percentage of track segments, signals, and systems with performance restrictions. Recipients will report a target and performance of this metric for each rail mode. FTA will provide additional technical assistance and guidance on how to measure a performance restriction.

(d) *Facilities.* The performance measure for facilities is the percentage of all facilities rated below condition 3 on the condition scale used by FTA's Transit Economic Requirements Model (TERM). Reporters must provide a condition rating for each facility at least once every three years. The system will automatically calculate performance based on these reports. Reporters are also required to provide an annual target for each facility type. FTA will provide additional technical assistance and guidance on to measure a facility condition rating on the TERM scale.

Issued this 14th day of July 2016 in Washington, DC.

Carolyn Flowers,

Acting Administrator.

[FR Doc. 2016–17075 Filed 7–25–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0030]

Transit Asset Management: Proposed Guidebooks

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of proposed guidebooks and request for comments.

SUMMARY: FTA has placed in the docket and on its Web site proposed guidance in the form of two FTA guidebooks to facilitate implementation of FTA's Transit Asset Management program: (1) "Guideway Performance Restriction Calculation" and (2) "Facility Condition Assessment." The purpose of the proposed guidebooks is to inform the transit community of calculation methodologies for state of good repair performance measures for infrastructure and facilities. By this notice, FTA seeks public comment on the proposed guidebooks.

DATES: Comments must be submitted by September 26, 2016. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by only one of the following methods, identifying your submission by DOT Docket Number FTA–2016–0030. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov.*

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

Fax: 202–493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2016–0030) for this notice at the beginning of each submission of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. All comments received will be posted without change to *www.regulations.gov* including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477) or *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. Eastern Standard Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program matters, contact John Giorgis, FTA Office of Budget and Policy, at (202) 366–5430, or *john.giorgis@dot.gov.* For legal matters, contact Charla Tabb, FTA Attorney-Advisor, Office of Chief Counsel, at (202) 366–5152 or *charla.tabb@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background
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A. Facility Condition Assessment
B. Guideway Performance Restriction Calculation

I. Background

The proposed documents incorporate changes to FTA's programs due to the Moving Ahead for Progress in the 21st Century Act (MAP–21); the publication of the final rule for FTA's National Transit Asset Management (TAM) System and amendments to the National Transit Database (NTD) regulations; and changes in terminology used in the 2012 Asset Management Guide. The proposed documents reflect these changes, propose policies, and add information.

In today's **Federal Register**, FTA has issued its final rule for the National Transit Asset Management (TAM) System and the final notice for the National Transit Database Asset Inventory Module. The final rule includes four (4) state of good repair (SGR) performance measures for capital assets: (1) *Equipment: (non-revenue) service vehicles;* The performance measure for non-revenue, support-service and maintenance vehicles equipment is the percentage of those vehicles that have met or exceeded their useful life benchmark (ULB); (2) *Rolling stock.* The performance measure for rolling stock is the percentage of revenue vehicles within a particular asset class that have either met or exceeded their ULB; (3) *Infrastructure: rail fixed-guideway, track, signals, and systems.* The performance measure for rail fixed-guideway, track, signals, and systems is the percentage of track segments with performance restrictions; and (4) *Facilities.* The performance measure for facilities is the percentage of facilities within an asset class, rated below condition 3 on the TERM scale.

This notice announces the availability of proposed guidebooks for calculating infrastructure and facilities performance measures: "Guideway Performance Restriction Calculation" (Infrastructure) and "Facility Condition Assessment" (Facilities).

The proposed guidebooks are not included in this notice; instead, electronic versions are available on FTA's Web site, at *www.transit.dot.gov/TAM,* and in the docket, at *www.regulations.gov.* Paper copies of the proposed guidebooks may be obtained by contacting FTA's Administrative Services Help Desk at (202) 366–4865.

FTA seeks comment on the proposed guidebooks. FTA will publish a second notice in the **Federal Register** after the close of the comment period. The second notice will respond to comments received and announce the availability of the final guidebooks.

II. Overview of Guidebooks

The final rule includes performance measures for infrastructure and facilities categories; however it was silent with regard to calculation methodologies. The guidebooks referenced herein provide both standard terminology and calculation options for transit providers to conform to the proposed SGR performance measures for infrastructure and facilities. Specifically the guidebooks describe how to measure and report the Infrastructure and Facility performance measures to the NTD.

Each guidebook is organized into four main sections:

Section 1 describes the scope and provides a brief policy background, linking it to the requirements of the NTD.

Section 2 outlines data requirements and definitions relating to reporting guideway performance restriction or facility condition data.

Section 3 details procedures for specific measurement of each performance measure.

Section 4 presents a set of appendices, including a glossary of terms, example forms, and references.

A. Performance Restriction Calculation

This guidebook provides an objective definition of a performance restriction and step-by-step procedures for calculating guideway under-performance restrictions.

B. Facility Condition Assessment

This guidebook details facility components and sub-components, and provides instructions on how to assess their condition.

FTA encourages interested stakeholders to carefully review the proposed guidebooks in their entirety, particularly the definitions, calculations, and templates, and provide comments to the docket.

Issued in Washington, DC, this 14th day of July 2016.

Carolyn Flowers,

Acting Administrator.

[FR Doc. 2016–17076 Filed 7–25–16; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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FEDERAL REGISTER

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Part III

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, et al.
Hazardous Materials: Miscellaneous Amendments Pertaining to DOT-Specification Cylinders (RRR); Proposed Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 178 and 180

[Docket No. PHMSA–2011–0140 (HM–234)]

RIN 2137–AE80

Hazardous Materials: Miscellaneous Amendments Pertaining to DOT-Specification Cylinders (RRR)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is proposing to amend the Hazardous Materials Regulations to revise certain requirements applicable to the manufacture, use, and requalification of DOT-specification cylinders. PHMSA is taking this action in response to petitions for rulemaking submitted by stakeholders and to agency review of the compressed gas cylinders regulations. Specifically, PHMSA is proposing to incorporate by reference or update the references to several Compressed Gas Association publications, amend the filling requirements for compressed and liquefied gases, expand the use of salvage cylinders, and revise and clarify the manufacture and requalification requirements for cylinders.

DATES: Comments must be submitted by September 26, 2016. To the extent possible, PHMSA will consider late-filed comments as a final rule is developed.

ADDRESSES: You may submit comments identified by the docket number PHMSA–2011–0140 (HM–234) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this NPRM at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (*see* **ADDRESSES**). To access and review the ASME material proposed for incorporation by reference in this rulemaking, please refer to the following Web site: *http://go.asme.org/PHMSA-ASME-PRM.* To access and review the CGA materials proposed for incorporation by reference in this rulemaking, please refer to the following Web site: *https://www.cganet.com/customer/dot.aspx.*

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eileen Edmonson, Standards and Rulemaking Division, and Mark Toughiry, Mechanical Engineer, Engineering and Research Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, at (202) 366–8553.

SUPPLEMENTARY INFORMATION:

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III. Petitions for Rulemaking and Comments Received
IV. Special Permits
V. Agency Initiated Editorial Corrections
VI. Section-by-Section Review
VII. Regulatory Analyses and Notices
  A. Statutory/Legal Authority for This NPRM
  B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures
  C. Executive Order 13132
  D. Executive Order 13175
  E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies
  F. Paperwork Reduction Act
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I. Executive Summary

Cylinders filled with a Class 2 hazardous material (gas) and offered for transportation must comply with various subparts of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). These include 49 CFR part 173, subpart G, which sets forth the requirements for preparing and packaging gases; 49 CFR part 178, subpart C, which sets forth the specifications for cylinders (*i.e.,* how they should be constructed); and 49 CFR part 180, subpart C, which sets forth the requirements for continued qualification, maintenance, and periodic requalification of cylinders. Additionally, cylinders must meet other requirements in the HMR, such as regulations that address the modal effects on cylinders in transportation including general handling, loading, unloading, and stowage.

PHMSA (also "we" or "us"), in response to petitions for rulemaking submitted by stakeholders and an agency initiated review of the regulations, is proposing changes to the HMR, including but not limited to the following: Incorporating by reference or updating references to several Compressed Gas Association (CGA) publications; amending the filling requirements for compressed and liquefied gases; expanding the use of salvage cylinders; revising and clarifying the manufacture and requalification requirements for cylinders; and adopting a special permit (DOT–SP 14237). This NPRM is also presenting minor and miscellaneous regulatory editorial corrections. Further, PHMSA is addressing the comments received from a previous Advance Notice of Proposed Rulemaking (ANPRM; 77 FR 31551), and proposing additional revisions that have been requested in petitions received since the ANPRM's 2012 publication. These proposed revisions intend to reduce regulatory burdens while maintaining or enhancing the existing level of safety. In this NPRM, PHMSA is responding to 20 petitions for rulemaking submitted by stakeholders.

II. ANPRM Background

On May 29, 2012 [77 FR 31551], PHMSA published an ANPRM to obtain public comment from those likely to be affected by the possible incorporation of 10 petitions for rulemaking and 3 special permits into the HMR. These include cylinder manufacturers (approximately 568 companies); cylinder requalifiers; independent inspection agencies; commercial establishments that own and use DOT-specification cylinders and UN pressure receptacles; and individuals who export non-UN/ISO compressed gas cylinders. Incorporating these petitions for rulemaking and special permits would update and expand the use of currently authorized industry consensus standards; revise the construction, marking, and testing requirements of DOT–4 series cylinders; clarify the filling requirements for cylinders; discuss the handling of cylinders used in fire suppression system; and revise the requalification and condemnation requirements for cylinders.

The ANPRM comment period closed on August 27, 2012. PHMSA received comments from 13 stakeholders, including compressed gas and/or cylinder manufacturers, cylinder testers, and trade associations representing the compressed gas industry or shippers of hazardous materials. Most comments either answered questions PHMSA posed in the ANPRM or responded to multiple petitions and/or special permits. Regarding the petitions, the comments received were mostly supporting for all but one—P–1515. PHMSA received four comments regarding special permits, and all supported their adoption into the HMR. A list of the commenters, along with the related Docket ID Number, is shown in Table 1 below:

TABLE 1—ANPRM COMMENTERS AND ASSOCIATED COMMENTS DOCKET NOS.

Company	Docket ID No.
Air Products and Chemicals, Inc	PHMSA–2011–0140–0004 PHMSA–2011–0140–0008 PHMSA–2011–0140–0018
Bancroft Hinchley	PHMSA–2011–0149–0024
Barlen and Associates, Inc	PHMSA–2011–0140–0019
City Carbonic, LLC	PHMSA–2011–0140–0029
Compressed Gas Association	PHMSA–2011–0140–0005 PHMSA–2011–0140–0012 PHMSA–2011–0140–0013 PHMSA–2011–0140–0020
Council on Safe Transportation of Hazardous Articles, Inc	PHMSA–2011–0140–0026
CTC Certified Training	PHMSA–2011–0140–0001 PHMSA–2011–0140–0023 PHMSA–2011–0140–0030
HMT Associates	PHMSA–2011–0140–0002 PHMSA–2011–0140–0021
Hydro-Test Products, Inc	PHMSA–2011–0140–0017
Manchester Tank	PHMSA–2011–0140–0016
Norris Cylinder	PHMSA–2011–0140–0025
SodaStream USA, Inc	PHMSA–2011–0140–0027
Worthington Cylinder Corporation	PHMSA–2011–0140–0028

III. Petitions for Rulemaking and Comments Received

Table 2 lists the petitions included in the docket for this proceeding. This NPRM addresses 20 total petitions. Ten petitions are associated with the ANPRM, and 10 additional petitions have been included since its publication. This table provides the petition number, the petitioner's name, the docket number on *www.regulations.gov*, a brief summary of the petitioner's requests, the affected sections, and whether or not we are proposing to adopt the petition:

TABLE 2—PETITION SUMMARY

Petition No.	Petitioner	Docket No.	Summary	Proposed affected sections	Proposing to adopt?
P–1499	Compressed Gas Association.	PHMSA–2007–28485	Replace the incorporated by reference (IBR) Seventh Edition of the CGA C–6 Standards for Visual Inspection of Steel Compressed Gas Cylinders with the revised Tenth Edition and update the appropriate references throughout the HMR.	§§ 171.7; 172.102 (SP 338); 173.3(d)(9); 173.198(a); 180.205(f)(1); 180.209(c), (b)(1)(iii), (d), (f), (g), (m); 180.211(d)(1)(ii); 180.411(b); 180.510(c).	Yes.
P–1501	Compressed Gas Association.	PHMSA–2007–28759	Revise the specification requirements for 4B, 4BA, 4BW, and 4E cylinders to provide clarity.	§§ 178.50, 178.51, 178.61, 178.68.	Yes, in part.
P–1515	Certified Training Company	PHMSA–2008–0101	Adopt changes to the requalification process designed to clarify the regulations in the event CGA Standard C–1, Methods of Pressure Testing Compressed Gas Cylinders, is not incorporated.	§§ 180.203, 180.205, 180.207, 180.209, 180.211, 180.212, 180.213, 180.215, appendix C to part 180, appendix E to part 180.	Yes, except those changes not necessary because of IBR of CGA C–1 under P–1626.

TABLE 2—PETITION SUMMARY—Continued

Petition No.	Petitioner	Docket No.	Summary	Proposed affected sections	Proposing to adopt?
P–1521	Compressed Gas Association.	PHMSA–2008–0152	Allow the use of labels described in CGA C–7–2004 on a cylinder contained in an overpack.	§ 172.400a(a)(1)(i)	Yes.
P–1538	The Wicks Group, representing Jetboil Inc.	PHMSA–2009–0138	Allow § 173.306(a)(1) to permit camping stove cylinders containing liquefied petroleum gas in amounts less than four (4) ounces to be shipped as consumer commodity (ORM–D). Define "capacity" in § 171.8.	§§ 171.8, 173.306(a)(1)	No.
P–1539	Matheson Tri-Gas	PHMSA–2009–0140	Allow DOT 3A, 3AA, 3AL cylinders in Division 2.2 Services to be retested every 15 years. Allow DOT 3A, 3AA, and 3AL cylinders packaged with Division 2.1 materials to be requalified every 10 years..	§ 180.209(a)	No.
P–1540	Compressed Gas Association.	PHMSA–2009–0146	Require newly manufactured DOT 4B, 4BA, 4BW, and 4E cylinders to be marked with the mass weight, tare weight, and water capacity.	§ 178.35(f)	Yes.
P–1546	GSI Training Services, Inc.	PHMSA–2009–0250	Allow cylinders used as a component of a fixed fire suppression system to be transported under the exceptions applicable to fire extinguishers.	§ 173.309(a)	Yes.
P–1560	Air Products and Chemicals, Inc.	PHMSA–2010–0176	Modify the maximum permitted filling densities for carbon dioxide and nitrous oxide to include 70.3%, 73.2%, and 74.5% in DOT 3A, 3AA, 3AX, 3AAX, and 3T cylinders.	§ 173.304a(a)(2)	No. Addressed by revisions made under rulemaking HM–233F [81 FR 3635].
P–1563	Regulatory Affairs Management Center—3M Package Engineering, Global Dangerous Goods.	PHMSA–2010–0208	Authorize an "overpack" as a strong outer package for cylinders listed in the section, except aerosols "2P" and "2Q," marked with the phrase "inner packagings conform to the prescribed specifications".	§ 173.301 (a)(9)	Uncertain. We are asking for further comment.
P–1572	Barlen and Associates, Inc.	PHMSA–2011–0017	Revise the filling ratio for liquefied compressed gases in MEGCs consistent with Packing Instruction (P200) of the United Nations (UN)—Model Regulations (17th ed. 2011), as specified in § 173.304b; and prohibit liquefied compressed gases in manifolded DOT cylinders from exceeding the filling densities specified in § 173.304a(a)(2).	§§ 173.301(g)(1)(ii) and 173.312.	Yes, in part.
P–1580	HMT Associates	PHMSA–2011–0123	Require the burst pressure of the rupture disc on a cylinder "shall not exceed 80% of the minimum cylinder burst pressure and shall not be less than 105% of the cylinder test pressure".	§§ 173.301(f)(4), 173.302(f)(2), 173.304(f)(2).	Yes.
P–1582	Water Systems Council	PHMSA–2011–0135	Revise the limited quantity exception for water pump system tanks to authorize transport of tanks manufactured to American National Standards Institute's Water Systems Council Standard PST–2000–2005(2009).	§ 173.306(g)	Yes.

TABLE 2—PETITION SUMMARY—Continued

Petition No.	Petitioner	Docket No.	Summary	Proposed affected sections	Proposing to adopt?
P–1592	Compressed Gas Association.	PHMSA–2012–0173 ...	IBR CGA S–1.1, 2011 Pressure Relief Device Standards, Part 1, Cylinder for Compressed Gas, Fourteenth Edition.	§§ 173.301(c), (f) and (g), 173.304a(e), 178.75(f).	Yes.
P–1596	Chemically Speaking, LLC.	PHMSA–2012–0200 ...	Add Class 4 and Class 5 hazardous materials to the hazard classes in an authorized salvage cylinders.	§ 173.3(d)(2)	Yes.
P–1622	Worthington Cylinders Corporation.	PHMSA–2013–0210 ...	Restrict the internal volume of hazardous materials shipped in a DOT-specification 39 cylinder to not exceed 75 cubic inches.	§§ 173.304a and 173.304a(a)(3).	Yes.
P–1626	Compressed Gas Association.	PHMSA–2013–0265 ...	IBR CGA C–1–2009, Methods for Pressure Testing Compressed Gas Cylinders, Tenth Edition (C–1, 2009) as a reference in 49 CFR, and provide for specific language for sections affected.	§§ 171.7, 178.36, 178.37, 178.38, 178.39, 178.42, 178.44, 178.45, 178.46, 178.47, 178.50, 178.51, 178.53, 178.55, 178.56, 178.57, 178.58, 178.59, 178.60, 178.61, 178.65, 178.68, 180.205, 180.209.	Yes.
P–1628	Compressed Gas Association.	PHMSA–2013–0278 ...	IBR CGA C–3–2005, Reaffirmed 2011, Standards for Welding on Thin-Walled, Steel Cylinders, Seventh Edition.	§§ 171.7, 178.47, 178.50, 178.51, 178.53, 178.55, 178.56, 178.57, 178.58, 178.59, 178.60, 178.61, 178.65, 178.68, 180.211.	Yes.
P–1629	Compressed Gas Association.	PHMSA–2014–0012 ...	IBR CGA C–14–2005, Reaffirmed 2010, Procedures for Fire Testing of DOT Cylinder Pressure Relief Device Systems, Fourth Edition, as a reference in 49 CFR.	§§ 171.7, 173.301, 173.323	Yes.
P–1630	Compressed Gas Association.	PHMSA–2014–0027 ...	Add the term "recondition" for DOT–4L welded insulated cylinders and revise language to clarify when a hydrostatic test must be performed on the inner containment vessel after the DOT–4L welded insulated cylinder has undergone repair.	§§ 180.203, 180.211(c), and 180.211(e).	Yes.

P–1499

The CGA submitted P–1499 requesting that PHMSA replace the currently incorporated by reference *C–6 Standards for Visual Inspection of Steel Compressed Gas Cylinders,* Seventh Edition with the revised Tenth Edition and update the appropriate references throughout the HMR. The Tenth Edition provides enhanced guidance for cylinder requalifiers—including guidance on the inspection of Multiple-Element Gas Containers (MEGCs) and the requirements for thread inspection for cylinders used in corrosive gas service—and clarifies maximum allowable depths and measuring techniques for various types of corrosion.

PHMSA identified approximately 5,000 companies that would be subject to this standard, with the majority being classified as small businesses using the Small Business Administration (SBA) size standards (<500 employees). This revision would impose a one-time cost of between $78 and $142 per document depending on the document format (electronic or hard copy) and the purchaser's CGA membership.

Air Products and Chemicals, City Carbonic, CGA, Hydro-Test Products, and Worthington Cylinders support the proposal as discussed in the May 29, 2012 ANPRM. No commenters objected to the proposal.

PHMSA agrees that the Tenth Edition provides improved and updated guidance on inspecting MEGCs. While there were no comments opposed to the incorporation, subsequent to the submission of this petition, a more current updated version of CGA C–6 has been made available (*i.e.*, an eleventh edition). Therefore, in this NPRM, PHMSA is proposing to update the IBR of CGA C–6 to the 2013 Eleventh Edition. We invite comment on this course of action.

P–1501

The CGA submitted P–1501 requesting that PHMSA revise the manufacturing requirements for DOT 4B, 4BA, 4BW, and 4E cylinders. According to the petition, the current DOT–4 series welded cylinder manufacturing requirements are unclear in some respects and result in varied interpretation by manufacturers and enforcement personnel. The CGA states that although the proposed changes do not present a significant economic impact to any single manufacturer or user, they will enhance regulatory clarity, promote consistent manufacturing practices, and create greater uniformity between the specifications for DOT–4 series cylinders and the requirements for welded cylinders found in International Organization for Standardization (ISO) Standard 4706–1, *Gas cylinders—Refillable welded steel cylinders—Part 1: Test pressure 60 bar and below,* which is referenced in the UN Model Regulations.

Summary of the changes proposed by P–1501 and the comments received are detailed below:

(1) Revise the requirements for DOT-specification 4B, 4BA, 4BW, and 4E cylinders in §§ 178.50(b), 178.51(b), 178.61(b), and 178.68(b), respectively, to ensure material compositions and the heat treatment are within the specified tolerances and are of uniform quality as follows: (1) Require a record of intentionally-added alloying elements, and (2) require materials manufactured outside of the United States to have a ladle analysis confirmed by a check analysis.

Norris Cylinder sought clarification on the requirement to report intentionally added alloying elements. Specifically, Norris Cylinder inquired if PHMSA would require the manufacturer to maintain documents other than the mill certificate and the DOT Test Report.

PHMSA has decided that the proposed revisions to §§ 178.50(b), 178.51(b), 178.61(b), and 178.68(b) with respect to proposed measure (2) above is not necessary based on the required duties of inspectors in § 178.35(c)(2) to verify the material of construction meets the requirements of the applicable specification by (1) making a chemical analysis of each heat of material; (2) obtaining a certified chemical analysis from the material manufacturer for each heat of material (a ladle analysis is acceptable); or (3) if an analysis is not provided for each heat of material by the material manufacturer, by making a check analysis of a sample from each coil, sheet, or tube. However, we do believe a record of intentionally added alloying elements will be useful for ensuring material compositions are within the specified tolerances. As pointed out by Norris cylinder, the regulatory text proposed by CGA does not specify who must maintain the document. In this NPRM, we specify that the cylinder manufacturer must maintain the record of intentionally added alloying elements. Further, we are not proposing to require a check analysis to confirm the ladle analysis for materials manufactured outside of the United States because we believe this is already addressed by requiring domestic performance of required check analyses under § 178.35(b) of the HMR. We invite comment on this course of action.

(2) Revise the pressure tests for DOT-specification 4B, 4BA, 4BW, and 4E cylinders in §§ 178.50(i), 178.51(i), 178.61(i), and 178.68(h), respectively, to permit use of the volumetric expansion test, a hydrostatic proof pressure test or a pneumatic proof pressure test.

Hydro-Test Products and Manchester Tank expressed concern that PHMSA would allow a pneumatic pressure test. Because the potential release of energy in the event of a cylinder rupture during a pneumatic test is much greater than that released if a cylinder ruptured during a hydrostatic test, the commenters state that the person conducting the test must take additional precautions to safeguard against injury, such as erecting a safety barrier to protect personnel. Worthington Cylinders noted that it had extensive experience conducting proof pressure tests with gas but further stated that each company's safety considerations of the testing equipment will be different.

Given the added risk associated with pneumatic testing and the fact that there are suitable alternatives to determine the leakproofness of a cylinder at the time of manufacture, PHMSA is not proposing to permit the use of pneumatic proof pressure testing in this NPRM.

(3) Revise the physical and flattening tests and retest criteria for DOT-specification 4B, 4BA, 4BW, and 4E cylinders in §§ 178.50, 178.51, 178.61, and 178.68, respectively, for consistency. These revisions would clarify the location on the cylinder from which the test specimens are removed.

Manchester Tank requested that the specific proposed wording, or more detailed information, be made available for comment. Readers may review the specific changes to these sections at the end of this document.

(4) Revise §§ 178.50(n), 178.51(n), and 178.61(o), and 178.68, respectively, for DOT-specification 4B, 4BA, 4BW, and 4E cylinders to permit marking on the footring for cylinders with water capacities up to 30 pounds, instead of 25 pounds.

Manchester Tank and Worthington Cylinders support the CGA proposal that would allow markings to be applied to the footring on cylinders up to 30-pounds water capacity, instead of the current capacity limit of 25 pounds. The commenters state that this revision would not impose any cost and would expand upon existing options. In this NPRM, PHMSA is proposing this revision as stated in the petition.

(5) *Add requirements for the location of markings on DOT 4E cylinders in § 178.68.*

Manchester Tank and Worthington Cylinders support the proposed modification to permit marking of the valve protection collar of DOT 4E cylinders. In this NPRM, PHMSA is proposing the revision as stated in the petition.

P–1515

The Certified Training Company (CTC) submitted P–1515 requesting that PHMSA make numerous revisions to the requirements for the requalification of DOT-specification cylinders found in 49 CFR part 180, subpart C. These requirements include definitions for terms used in the subpart, references to CGA publications for the visual inspection of cylinders, and requirements for hydrostatically testing cylinders including methods to ensure the accuracy of test equipment. The CTC states that the current requirements create confusion for requalifiers and enforcement officials. In the ANPRM, PHMSA requested comments on two possible methods of responding to this petition. The first, as was suggested by CTC in P–1515, was to modify the specific HMR provisions in §§ 180.203 through 180.215 for requalification of cylinders. The second was to IBR into § 180.205 CGA C–1, *Methods for Pressure Testing Compressed Gas Cylinders,* Tenth Edition (2009), which contains most of the provisions and additions specified in P–1515, including revisions to definitions in § 180.203, appropriate procedures for conducting the hydraulic pressure tests, and marking and recordkeeping requirements.

PHMSA identified 980 entities that conduct hydrostatic retesting. Incorporation of CGA C–1 would impose a one-time cost of between $102 and $186 per document depending on the document format (electronic or hard copy) and the purchaser's CGA membership.

We received eight comments on this petition. Air Products and Chemicals, CGA, Bancroft Hinchley, and Worthington Cylinders support adoption of the CGA C–1 standard. Conversely, Hydro-Test Products stated that the proposals in P–1515 and the CGA C–1 impose stricter requirements on accuracy, pressure drop, and verification, therefore imposing an unnecessary burden on the industry. SodaStream requested PHMSA modify the appropriate sections of 49 CFR part 180, subpart C, instead, as adoption of CGA C–1 would limit their ability to conduct volumetric expansion tests and would result in a need to obtain a special permit.

As indicated by Worthington Cylinders, several commenters stated similar concerns to those shared regarding the option to IBR CGA C–1, with Worthington Cylinders further stating that CGA C–1 "represents the best testing practices for the industry." Moreover, as indicated by CGA, the changes proposed in P–1515 would not resolve the confusion of requalifiers and enforcement officials that the petition seeks to address. For these reasons, in this NPRM, PHMSA is proposing to IBR CGA C–1, *Methods for Pressure Testing Compressed Gas Cylinders,* at § 171.7 and into § 180.205 and numerous other sections (see discussion of Petition P–1626). However, subsequent to the submission of this petition, an eleventh edition of CGA C–1 has been made available. Therefore, in this NPRM, PHMSA is proposing to update the IBR of CGA C–1 to the 2016 Eleventh Edition. We invite comment on this course of action.

The CTC further requests that PHMSA correct and reissue two letters of interpretation (Reference Nos. 00–0309 and 05–0087), as well as provide formal interpretation on six additional issues identified in its petition. PHMSA invites public comment on the questions, recommendations, and proposed responses detailed below:

(1) Existing Clarification Letter Reference No. 00–0309

On March 15, 2001, PHMSA responded to an inquiry from Vallen Technical Services (VTS) pertaining to the pressure retest of DOT-specification cylinders (Reference No. 00–0309). Citing that former § 173.34(e)(4)(v)—currently § 180.205(g)(5)—states, "In the case of a malfunction of the test equipment, the test may be repeated at a pressure increased by 10 percent or 100 [pounds per square inch] psi, whichever is less," VTS stated its understanding that only one repeat test is permitted. PHMSA responded with the following: "Your understanding of this requirement is correct. Section 173.34(e)(4)(v) permits only one repeat test in the case of a malfunction of the test equipment. With regards to your reference to the Compressed Gas Association (CGA) pamphlet C–1, currently the HMR do not incorporate the pamphlet by reference. However, we proposed in a notice of proposed rulemaking to reference certain pressure test procedures contained in the CGA pamphlet. (Docket No. HM–98–3684 (HM–220); October 30, 1998)."

The CTC states that § 180.205(g)(5) "permits only one repeated test" and further posits that this letter's response directly contradicts language PHMSA previously issued in a final rule [Docket No. HM–220A (61 FR 26750); February 28, 1996)] that states: "A commenter specifically asks how many repeated tests are allowed before condemning the cylinder, and the response is that the cylinder is to be condemned when it exceeds its permanent expansion limit. It even specifies, '. . . Thus when this limit [Perm. Expan.] is exceeded . . .' [*i.e.,* no limit to the number of repeats is given, even when the specific question was asked.]"

Although the CTC states it favors limiting the number of repeat tests of this type, it believes PHMSA's statement on this matter in Reference No. 00–0309 "constitutes a rulechange, not an interpretation." The CTC believes requiring only one repeat test "may be overly restrictive in some cases, such as small aircraft cylinders, and certain composite cylinders," and suggests allowing two repeated tests, as permitted in special permits DOT–SPs 10915, 10945, and 11194, would be "more in line with current industry procedure."

On August 8, 2002, PHMSA's predecessor agency, the Research and Special Programs Administration, issued a final rule under Docket No. HM–220D that consolidated the requirements for qualification, use, and maintenance of cylinders in 49 CFR part 180, subpart C. As a result, the regulatory sections referred to in Reference No. 00–0309 are no longer correct. Further, not all the requirements previously codified in § 173.34 have parallel requirements in 49 CFR [art 180, subpart C. See § 180.205(g)(5) for additional information. However, PHMSA agrees with the CTC that the language in Reference No. 00–0309 may be misleading and believes the IBR of CGA C–1 into § 180.205 will resolve any issue the CTC may have with this letter of interpretation. We invite comment on this conclusion. PHMSA also plans to retract Reference No. 00–0309.

(2) Existing Clarification Letter Reference No. 05–0087

On May 10, 2005, PHMSA responded to an inquiry from G&C Kinney, Inc., concerning calibration verification of equipment used for volumetric expansion tests for DOT-specification cylinders (Reference No. 05–0087). The company asked whether the maximum pressure at which the verification test is being conducted (for example, 3,000 pounds) must be maintained at the final pressure for 30 seconds or whether the pressure may be allowed to drop between 2 psi and 10 psi. PHMSA responded by stating, "Overall, for any pressure test (calibration or production retest), the 30-second hold time begins only when the cylinder has completed its expansion. If the cylinder pressure drops by any measurable amount (such as 2 psi) during the recorded 30-second hold time, the hold time must be restarted, or the test would be considered invalid."

The CTC requests that PHMSA retract its Reference No. 05–0087 response because it contradicts regulatory text found in § 180.205(g)(2), (g)(3)(i), and (g)(5); DOT–SPs 10915 and 10945; standards in CGA C–1, Seventh Edition (1996); and some manuals of manufacturers of hydrostatic test equipment. Specifically, the CTC states the following:

> Paragraph 180.205(g)(5) states, "Minimum test pressure must be maintained for at least 30 seconds, *and as long as necessary for complete expansion of the cylinder.*" [Emphasis added.] This statement tells us that the cylinder may be expanding during the 30 second hold time, and if the cylinder is still expanding at the end of the 30 seconds, we must hold even longer than the minimum 30 seconds. As the cylinder expands, its volume increases, and pressure will drop. Therefore, the statement "as long as necessary for complete expansion of the cylinder" is equivalent to saying "until the pressure ceases to drop". The regulations state that this may occur during the 30 second hold time; the regulations do not specify the hold time begins after the cylinder has completed its expansion. Therefore, this "interpretation" directly contradicts § 180.205(g)(5), and constitutes a rule change.
>
> Paragraph 180.205(g)(2) states, "[t]he pressure indicating device of the testing apparatus must permit reading of pressures to within 1% of the minimum prescribed test pressure of each cylinder tested." Paragraph 180.205(g)(3)(i) states, "[t]he pressure-indicating device, as part of the retest apparatus, is accurate within ±1.0% of the prescribed test pressure of any cylinder tested that day." This interpretation attempts to declare a test invalid due to a 2 psi drop in pressure at 3000 psi. The pressure indicating device has already been defined as having a 1% resolution and ±1% accuracy. According to the definition of the device, it can deviate by ±30 psi at 3000 psi (30 psi = 1% of 3000 psi). This interpretation violates the definition of the device as stated in these two paragraphs.
>
> Furthermore, many special permits, such as DOT–SP 10915 and 10945, recognize that different materials (such as the carbon-fiber wrapped, aluminum lined cylinders referenced in these special permits) take even longer than 30 seconds to completely deform under the load of test pressure, and therefore require a hold time of 60 seconds. According to this interpretation, these special permits would require a hold time of 60 seconds (or longer), until the cylinder completed its expansion, and then an additional 60 seconds of hold time, wherein the pressure could not drop by even 2 psi. This, obviously, is not the intention of these special permits when they state, ". . . for a minimum test time of one minute."
>
> Industry standard CGA C–1, Seventh Edition 1996, "Methods for Hydrostatic Testing of Compressed Gas Cylinders," in paragraph 4.4(g) states, "[w]hen the desired

> value is reached, stop the pressurization and hold for 30 seconds." And, "[t]he expansion and pressure should remain stable during the entire 30 seconds. If either the pressure or expansion do not stabilize within ±1%, see 4.5 [Troubleshooting]." Thus, the 30-second hold begins when the pump stops, and deviation during the hold time is allowed up to the defined accuracy of the device, that is, ±1% of the test pressure, and ±1% of the total expansion.
>
> Manufacturers of hydrostatic test equipment specify in their manuals and the software controlling automated equipment that the 30-second hold time begins when the test pressure is reached and the pump is turned off.

The CTC further states: "This interpretation declares virtually every test performed on cylinders in the past century to be invalid, since every cylinder tested (as well as the hoses on the machine) will continue to expand after the pump is stopped. Therefore the pressure will drop. The only issue is whether or not the device is capable of detecting such a minute drop in pressure." The CTC believes this interpretation is based on two misunderstandings:

1. *Closed loop hydraulics vs. open system.* In a closed loop hydraulic system (such as the controls on an aircraft), any drop in pressure is unacceptable. This does not apply to an open system where the pressure will drop (*e.g.*, a cylinder expanding during a test).
2. *Higher precision digital devices vs. analog devices.* There has always been a slight drop in pressure during the hold time. On an analog device, it was not visible. It is now visible on a digital device, but that does not simply invalidate the test.

PHMSA agrees with the CTC that the language in Reference No. 05–0087 is misleading and believes the IBR of CGA C–1 into § 180.205, in conjunction with additional changes to the regulations proposed consistent with petition P–1626, will resolve any issue the CTC may have with this letter of interpretation. We invite comment on this conclusion. PHMSA also plans to retract Reference No. 05–0087.

P–1521

The CGA submitted P–1521 requesting that PHMSA modify the provision in § 172.400a(a)(1)(i) to remove the limitation that only allows the use of the neckring markings if a cylinder is not overpacked. The petition would still require the overpack to display the labels in conformance with 49 CFR part 172, subpart E.

The HMR permit the use of a neckring marking, under certain conditions, in conformance with the CGA C–7, *Guide to Preparation of Precautionary Labeling and Marking of Compressed Gas Containers, Appendix A,* Eighth Edition (2004) under § 172.400a. This neckring marking identifies the contents of a cylinder by displaying the proper shipping name, the UN identification number, and the hazard class or division label within a single marking. Section 172.400a(a)(1) permits the use of this marking in lieu of required labels on a Dewar flask meeting the requirements in § 173.320 or a cylinder containing Division 2.1, 2.2, and 2.3 material that is not overpacked. This requirement should provide flexibility in hazard communication for cylinders, especially small cylinders.

The marking prescribed in appendix A to CGA C–7 provides useful information in a clear and consistent manner, and its widespread use on cylinders has enhanced its recognition. CGA's proposed change would provide greater flexibility for shipments of overpacked cylinders while ensuring adequate hazard communication. If cylinders are contained in an overpack, the overpack must display the appropriate markings and labels.

PHMSA identified approximately 86 entities engaged in Industrial Gas Manufacturing, of which 74 are classed as small entities (<500 employees). Other potentially impacted entities include wholesalers of medical equipment, service establishment equipment and supplies, and other miscellaneous durable goods. In the ANPRM, PHMSA asked for comments on the potential implications of this change, specifically regarding its necessity and the potential safety and economic impacts. PHMSA also sought data concerning the breadth of shipments to be impacted by the proposal. PHMSA received no responses to these questions from commenters to the ANPRM.

Both Air Products and Chemicals and Worthington Cylinders support CGA's petition to revise § 172.400a(a)(1)(i). Therefore, in this NPRM, PHMSA is proposing to revise § 172.400a(a)(1)(i) to remove the limitation that would only allow the use of the neckring markings if the cylinders are not overpacked, as proposed in P–1521. The petition would still require the overpack to display the required labels in conformance with 49 CFR part 172, subpart E.

P–1538

On behalf of Jetboil, Inc., The Wicks Group submitted P–1538 requesting that PHMSA revise § 173.306(a)(1) to permit camping stove cylinders containing liquefied petroleum gas (LPG) in amounts less than 4 ounces but in a container exceeding 4 fluid ounce capacity to be shipped as consumer commodity (ORM–D). Section 173.306 prescribes requirements for transporting compressed gases as a limited quantity and a consumer commodity. Paragraph (a)(1) of § 173.306 requires a container of only compressed gas to be limited to a capacity of 4 fluid ounces or less except cigarette lighters, which are required to meet rigorous performance design standards and packaging requirements prescribed in § 173.308. The Wicks Group states if more than 4 fluid ounces of the liquefied portion of the gas were enclosed in the cylinder, "there would be insufficient space remaining for the gaseous portion of the liquefied gas, as required by [§§ 173.304(b) and 173.304a(d)(1)]. In other words, [§§ 173.304(b) and 173.304a(d)(1)] together limit the *percentage of space* [emphasis added] that the liquefied portion of a liquefied gas may take up in a cylinder. Thus, since the canisters at issue here could not safely or legally hold more than four (4) fluid ounces of LPG while complying with the HMR filling limits and filling density requirements, they can reasonably be said to have a capacity of four (4) fluid ounces." The petitioner included a certificate from the manufacturer of the "Jetpower" 100G canister of cooking fuel, Taeyang Ind., Co., LTD, of Seoul, Korea, certifying "that the capacity of the 100G canister is less than 4 oz. because the capacity of the canister should be measured by the amount of liquefied gas contents in a fluid condition that it can hold, still leaving room for the portion in a gas condition. The 100G canisters must have less than 4 oz. of liquefied gas to meet that requirement. The capacity of the 100G canisters 'Jetpower' should be considered less than 4 ounces. These canisters are safe for transportation as ORM–D.[1] We are unaware of any problems occurring with these canisters in transportation." PHMSA seeks public comment on the safety issues associated with this proposal, especially those regarding the safe performance of containers of this type in transportation.

The Wicks Group further states on behalf of Jetboil, Inc., that ". . . 49 CFR 173.306(a)(1) is ambiguous as currently drafted. In brief, the HMR do not define the term capacity, but do define the term 'maximum capacity,' at 49 CFR 171.8, as meaning 'the maximum inner volume of receptacles or packagings.' If PHMSA interprets 'capacity' as meaning the total volume of the container, then the word 'maximum' would be rendered meaningless. This violates the long-established rule of statutory and regulatory interpretation that courts must give effect to every clause and word of a legal text whenever possible. Indeed, the omission of a word in one section of a text can be telling where that word issued in another section of the same act or regulation." In addition, the petitioner states providing industry an opportunity to comment on this issue in a rulemaking will give them the chance "to explain why these containers present a reduced safety risk, and to demonstrate that there have been no transportation safety incidents involving these containers."

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[1] Note that the ORM–D class will be completely phased out for all modes of transportation by December 31, 2020.

PHMSA has limited the amount of compressed gas in limited quantity packagings to reduce the opportunity and speed of the gaseous product's reaction to an activating event, having found that including non-gaseous materials in the same container with the gas—such as foodstuffs, soap, etc.—slowed this reaction. The petitioner requested that PHMSA define the word "capacity" in the HMR to add meaning to the maximum capacity definition in § 171.8. The Interstate Commerce Commission first adopted the provision for § 173.306(a)(1) (previously § 73.306(a)(1)) in a final rule published July 1, 1966 (31 FR 9067). The provision provided an "exemption" (*i.e.*, an exception) from regulations for shipping of compressed gases "when in containers of not more than 4 fluid ounce water capacity." Thus, historically, the provision applies to the capacity of the container and not to the quantity of its contents. This is consistent with design requirements for the capacity of packagings found in part 178 that includes a specification for the water capacity of the packaging (*e.g.*, Specification 3A and 3AX seamless steel cylinders in § 178.36); however, the publication of a final rule on April 15, 1976 (41 FR 15972) inadvertently dropped the term "water" from paragraph (a)(1) regardless of there having been no express discussion of the intent to do so or to change the size standard from the originally adopted water capacity to the quantity of the contents.

Furthermore, the definition "maximum capacity" was introduced as part of a harmonization effort with international regulations and standards in a final rule published December 21, 1990 (55 FR 52402) for consistency with use of terminology internationally for UN performance oriented packaging. See the part 178, subpart L non-bulk performance oriented packaging sections. Therefore, based on the historical context of capacity as its use in § 173.306(a)(1) to mean water capacity and the adoption of the term "maximum capacity" in association with the adoption of UN performance-oriented packaging, we are not proposing to amend § 173.306(a)(1) to accommodate this petition for rulemaking.

P–1539

Matheson-TriGas submitted P–1539 requesting that PHMSA revise § 180.209, which prescribes requirements for requalifying cylinders. Paragraph (a) of § 180.209 requires each DOT-specification cylinder listed in "table 1 of this paragraph" to be requalified and marked in conformance with requirements specified in § 180.209. The petitioner requests that PHMSA extend the 10-year retest period prescribed in this table for DOT 3A, 3AA, and 3AL specification cylinders in Division 2.2 (non-flammable) gas service to once every 15 years. Matheson-TriGas also requests in its petition that PHMSA extend the 5-year retest period prescribed in this table for DOT 3A, 3AA, and 3AL specification cylinders in Division 2.1 (flammable) gas service to once every 10 years. The petitioner states: "Historically over 99.4% of cylinders in the above[-mentioned] services that were [subjected] to the water jacket test pass the test," and "it is more likely . . . the cylinder failed the external or internal visual [test] rather than failing the water jacket test."

Matheson-TriGas notes PHMSA's statement from an earlier rulemaking regarding the history of the plus rating for steel cylinders resulting from the steel shortage of World War II, which resulted in changes "that benefitted the industry with no compromise of public safety down to this day." Matheson-TriGas extrapolates that we face similar metal shortage challenges in today's economy.

Upon further consideration of this petition based on our concern of increasing the risk of cylinder failure by lengthening the timeframe between periodic qualifications, PHMSA is electing not to propose to revise the 10-year requalification period for DOT 3A, 3AA, and 3AL specification cylinders in Division 2.2 (non-flammable) gas service to once every 15 years, nor to revise the 5-year requalification period for DOT 3A, 3AA, and 3AL specification cylinders in Division 2.1 (flammable) gas service to once every 10 years. We invite comment on this decision and request detailed information in support or opposition to this decision.

P–1540

The CGA submitted P–1540 requesting that PHMSA require newly manufactured DOT 4B, 4BA, 4BW, and 4E cylinders to be marked with the mass weight, tare weight, and water capacity. As specified in § 178.35(f), the HMR require DOT-specification cylinders to be permanently marked with specific information including the DOT-specification, the service pressure, a serial number, an inspector's mark, and the date manufacturing tests were completed. These marks provide vital information to fillers and uniquely identify the cylinder.

Certain DOT 4-series specification cylinders contain liquefied gases filled by weight, so the tare weight (*i.e.*, the weight of the empty cylinder and appurtenances) or the mass weight (*i.e.*, the weight of the empty cylinder), and the water capacity must be known by the filler to properly fill the cylinder. This information is essential for cylinders filled by weight, as cylinders overfilled with a liquefied gas can become liquid full as the ambient temperature increases. If temperatures continue to rise, pressure in the overfilled cylinder will rise disproportionately, potentially leading to leakage or a violent rupture of the cylinder after only a small rise in temperature. Despite these risks, the HMR do not require tare weight, mass weight, or water capacity markings on DOT-specification cylinders.

To address this, the CGA petitioned PHMSA to require tare weight or mass weight, and water capacity to be marked on newly constructed DOT 4B, 4BA, 4BW, and 4E specification cylinders. The petition also requests that PHMSA provide guidance on the accuracy of these markings and define the party responsible for applying them. In its petition, CGA notes that PHMSA IBRs the National Fire Protection Association's *58-Liquefied Petroleum Gas Code* (NFPA 58), which requires cylinders used for liquefied petroleum gases to be marked with the tare weight and water capacity;[2] however, as stated in the petition, NFPA 58 gives no guidance as to the accuracy of these markings or the party required to provide them. The CGA states that this lack of guidance can lead to the overfilling of a cylinder and the potential for unsafe conditions.

While DOT 4B, 4BA, 4BW, and 4E cylinders are often used to transport liquefied compressed gas, we noted in the ANPRM that these are not the only cylinder types used for liquefied compressed gas transport. For that reason, in the ANPRM, PHMSA asked for comment regarding the potential revision of § 178.35 to require all DOT-specification cylinders suitable for the transport of liquefied gases to be marked with the cylinder's tare weight or water capacity. PHMSA understands that many in the compressed gas industry, especially the liquefied petroleum gas industry, already request manufacturers mark cylinders with this additional information as an added safety measure. Based on this assumption, PHMSA estimates the impact on the liquefied compressed gas industry will be minimal as many in the industry are already voluntarily applying these markings. In the ANPRM, we requested comment on this assertion.

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[2] Note that IBR of NFPA 58 is not for marking purposes but for purposes of equipping storage tanks containing LPG or propane with safety devices. See § 173.315(j).

PHMSA identified six U.S. based manufacturers of the cylinders identified in the petition, of which five are classified as small businesses using SBA size standards (< 500 employees). PHMSA requested comments and supporting data regarding the increased safety benefits and the economic impact of this proposal. With regards to the cost associated with this modification, in the ANPRM, PHMSA asked the following specific questions:

- What is the average total cost per cylinder to complete these markings (*i.e.,* is an estimated cost of $0.10 per character for new markings accurate)?
- What is the estimated quantity of newly manufactured 4B, 4BA, 4BW and 4E cylinders each year? Furthermore, how many of these cylinders already display tare weight and water capacity markings in compliance with NFPA 58 or other codes?
- How many manufacturers of the cylinders mentioned above are considered small businesses by the SBA?

PHMSA sought to identify: (1) The frequency of which the mass weight or tare weight, and water capacity markings are already permissively applied to cylinders, (2) the costs associated with applying these marks, (3) the safety benefits associated with the additional markings, and (4) the alternate methods or safeguards against overfilling of cylinders currently being implemented.

Air Products and Chemicals supports the petition with no additional comments. The CGA supports the inclusions of tare weight, mass weight, and water capacity requirements on newly constructed DOT 4B, 4BA, 4BW, and 4E specification cylinders at the time of manufacture but does not support—and strongly disagrees with—PHMSA's consideration of modifying § 178.35 to require all DOT-specification cylinders suitable for the transport of liquefied gases to be marked with the cylinder's tare weight and water capacity. The CGA also believes that the 49 CFR must further clarify that no cylinder must be filled with a liquefied gas unless a mass or tare weight is marked on the cylinder, providing the following justification:

- At the time of manufacture, the manufacturer would not know whether the DOT 3 series cylinders are or are not be used in a liquefied gas service;
- Marking all cylinders, as suggested by DOT, would include every cylinder manufactured in conformance with the specifications set forth in the HMR, which would therefore require cylinders that have been designed and manufactured for a specific permanent gas application be marked for tare weight and water capacity just because the cylinder could be used (at some time) for liquefiable gas;
- There would be instances on small 3-series cylinders where the additional marking would not fit onto the dome of the cylinder; and
- The economic impact estimated for marking all cylinders is significantly greater than the estimates submitted by PHMSA.

Manchester Tank expresses concern that numerous variations in stamped weights could cause confusion in the field among fillers. They state that adding mass weight stamping to a cylinder that already has tare weight stamped could lead to incorrect filling if the wrong figure is used. They ask PHMSA for specific clarification of the language to assign the duty to mark tare weight to the valve installer and indicate that there are many cylinders that are not valved by the manufacturer, further declared that those cylinders can be marked correctly with mass weight—but not with tare weight, since the weight of the appurtenance may not be known to the manufacturer of the vessel. In addition, Manchester Tank notes that available space for stamping is limited on some vessels and increased stamping will not allow significant space for retest marking information.

In this NPRM, PHMSA is proposing to revise § 178.35(f) to require that tare weight or mass weight, and water capacity be marked on certain DOT 4-series specification cylinders used for the transport of liquefied gases as petitioned by the CGA. We stress that while cylinder markings are important to ensure the safe filling of liquefied compressed gas, they do not take the place of adequate personnel training, procedures to ensure proper filling, and continued requalification and maintenance of cylinders in preventing incidents. PHMSA seeks additional comment on expanding this marking requirement to other DOT-specification cylinders and the costs and benefits as well as the safety implications of doing so.

P–1546

GSI Training Services submitted P–1546 requesting that PHMSA allow cylinders that form a component of fire suppression systems to use the proper shipping name "Fire extinguishers" when offered for transportation. The Hazardous Materials Table (HMT) in § 172.101 provides a shipping description for cylinders used as fire extinguishers (*i.e.,* "UN1044, Fire extinguishers, 2.2") and references § 173.309 for exceptions and non-bulk packaging requirements. Fire extinguishers charged with a limited quantity of compressed gas are excepted from labeling, placarding, and shipping paper requirements under certain conditions if the cylinder is packaged and offered for transportation in conformance with § 173.309.[3] Additionally, fire extinguishers filled in conformance with the requirements of § 173.309 may use non-specification cylinders (*i.e.,* cylinders not manufactured to specifications in part 178). Part 180 also provides special requirements for cylinders used as fire extinguishers (*e.g.,* § 180.209(j) includes different requalification intervals).

PHMSA has written several letters of clarification regarding the applicability of § 173.309 to fire extinguishers. Notably on March 9, 2005, PHMSA wrote a letter (Reference No. 04–0202) to Safecraft Safety Equipment regarding non-specification stainless steel cylinders used as a component in a fire suppression system for installation in vehicles and stated that the cylinders used in the fire suppression system appeared to meet the requirements of § 173.309. PHMSA issued another letter (Reference No. 06–0101) on May 30, 2008, to Buckeye Fire Equipment stating that the company could not use the shipping name "Fire extinguishers" for their cylinders, which served as a component of a kitchen fire suppression system, and must use the proper shipping name that best describes the material contained in the cylinder since these cylinders were not equipped to function as fire extinguishers. This latter clarification effectively required cylinders that are part of a fixed fire suppression system to meet an appropriate DOT-specification.

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[3] Note that the format of § 173.309 was changed under a final rule published January 7, 2013 (HM–215K; 78 FR 1101) such that the exceptions for limited quantities has been relocated to paragraph (d) of § 173.309.

In response to Reference No. 06–0101, GSI Training Services submitted a petition for rulemaking requesting PHMSA to allow cylinders that form a component of fire suppression systems to use the proper shipping name "Fire extinguishers" when offered for transportation, stating that: (1) At least one company manufactured over 39,000 non-specification cylinders for use in fire suppression systems based on the information provided in the March 9, 2005 letter; and (2) the May 30, 2008 clarification effectively placed this company out of compliance. GSI Training Services further suggests that cylinders comprising a component of a fixed fire suppression system will provide an equal or greater level of safety than portable fire extinguishers since cylinders in fire suppression systems are typically installed in buildings where they are protected from damage and not handled on a regular basis.

In this NPRM, PHMSA is proposing to revise the § 173.309 introductory text to include cylinders used as part of a fire suppression system as a cylinder type authorized for transport in accordance with the HMT entry for fire extinguishers. The controls detailed in § 173.309 provide an acceptable level of safety regardless of whether the cylinder is equipped for use as a handheld fire extinguisher or as a component of a fixed fire suppression system.

P–1563

3M Corporation submitted P–1563 requesting that PHMSA address the regulatory confusion between marking requirements for overpacks in § 173.25 and outside packages for certain thin-walled cylinders specified in § 173.301(a)(9). The petitioner notes that the differing marking requirements in §§ 173.25 and 173.301(a)(9) create confusion and make training difficult. This petition requests modification of the HMR to permit materials packaged in conformance with § 173.301(a)(9)—except aerosols "2P" and "2Q"—to display the "OVERPACK" marking described in § 173.25, in lieu of the current requirement for "an indication that the inner packaging conforms to prescribed specifications."

In accordance with § 173.301(a)(9), DOT-specification 2P, 2Q, 3E, 3HT, spherical 4BA, 4D, 4DA, 4DS, and 39 cylinders must be packed in strong non-bulk outer packagings. This configuration meets the definition of a combination package as indicated in paragraph (a)(9) and further, as defined in § 171.8 of the HMR. Paragraph (a)(9) requires the outside of this combination packaging to be marked with an indication that the inner packagings conform to the prescribed specifications. The completed combination package is subject to marking and labeling, as appropriate; however, the inner packagings do not have to be marked or labeled. These combination packages cannot also then be considered "overpacks." For each completed package bearing required marking(s) and label(s) that is placed in an overpack, for consolidation or ease of handling, the overpack must also display the appropriate marking(s) and label(s) unless visible through the overpack [see § 173.25(a)(2)]. The "OVERPACK" mark must be applied when specification packagings are required by the HMR to communicate that the overpack contains specification packagings in conformance with the HMR.

The marking "inside (inner) packages comply with the prescribed specifications" for overpacks in § 173.25 was changed in 2004 to "OVERPACK" in an effort to better align with global overpack requirements. The 3M Corporation accurately states that prior to 2004 both the overpack requirements in § 173.25 and the requirement in § 173.301(a)(9) to package certain DOT-specification cylinders in strong, non-bulk outer packagings used very similar language intended to inform package handlers that although not visible, the inner packages contained specification packagings that conformed to appropriate DOT or UN standards.

PHMSA recognizes that differing marking requirements in §§ 173.25 and 173.301(a)(9) to communicate the same intended meaning may be causing confusion without enhancing safety. In order to address the petition and provide for greater clarity, PHMSA is proposing to revise § 173.301(a)(9) to authorize use of the "OVERPACK" marking as specified in § 173.25(a)(3) as a method to satisfy the current requirement in paragraph (a)(1) to mark the completed package with an indication that the inner packagings conform to prescribed specifications for the listed cylinders. We agree with 3M that the issue is more complex for 2P and 2Q containers as specified in §§ 173.304, 173.305, and 173.306 and, therefore, are not including 2P and 2Q in the allowance for the "OVERPACK" marking. The revision will also include instructional language that the combination package is not to be considered an "overpack." PHMSA welcomes comments from affected entities regarding the following: potential consequences, safety and economic impacts, current level of difficulty and unnecessary confusion, need for change, quantity of shipments per year to be impacted, etc.

P–1572

Barlen and Associates submitted P–1572 requesting that PHMSA explicitly state in § 173.312 that for liquefied compressed gases in Multiple-Element Gas Containers (MEGCs), the filling density of each pressure receptacle must not exceed the values contained in Packing Instruction P200 of the UN Model Regulations, as specified in § 173.304b, and the contents of each DOT-specification cylinder cannot exceed the densities specified in § 173.304a(a)(2).[4]

Requirements for shipping MEGCs are specified in § 173.312. Specifically, § 173.312(b) details the filling requirements for MEGCs and states," [a] MEGC may not be filled to a pressure greater than the lowest marked working pressure of any pressure receptacle [and a] MEGC may not be filled above its marked maximum permissible gross mass." The requirement that each pressure receptacle contained in the MEGC may not be filled above the working pressure of the lowest marked working pressure of any pressure receptacle is clear for permanent (non-liquefied compressed) gases, which are generally filled by pressure; however, § 173.312(b) does not contain a corresponding requirement addressing pressure receptacles containing a liquefied compressed gas, which are most often filled by weight. This lack of specificity for MEGCs containing liquefied compressed gas has led to some confusion on methods for their proper filling. Therefore, in this NPRM, we propose to specify the filling ratio requirements for pressure receptacles.

PHMSA does not anticipate this provision will impose any new burden, as this proposal would only emphasize an important safety requirement already stated in § 173.304a for DOT-specification cylinders and § 173.304b for UN pressure receptacles. PHMSA invites comments from affected entities regarding the following: Safety and economic impacts, level of difficulty and unnecessary confusion, need for change, etc.

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[4] Note that the petition specifically referenced the 17th ed. of the UN Model Regulations, however, we will propose a change that references the edition currently incorporated by reference in § 171.7 because we biennially update the edition for harmonization with international standards.

P–1580

HMT Associates submitted P–1580 requesting that PHMSA revise §§ 173.302(f)(2) and 173.304(f)(2) to require that the burst pressure of a rupture disc coincide with CGA S–1.1 for DOT 39 cylinders offered for transportation after October 1, 2008; other DOT-specification cylinders with the first requalification due after October 1, 2008; and UN pressure receptacles prior to initial use. Specifically, as prescribed in 4.2.2 of CGA S–1.1, the required burst pressure of the rupture disc "shall not exceed 80% of the minimum cylinder burst pressure and shall not be less than 105% of the cylinder test pressure."

Section 173.301(f) states that a cylinder filled with a compressed gas and offered for transportation "must be equipped with one or more [pressure relief devices (PRDs)] sized and selected as to type, location and quantity and tested in conformance with CGA S–1.1 [*Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases,* Fourteenth Edition (2005)] and CGA S–7 [*Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders* (2005)]." Sections 172.302(f)(2) and 172.304(f)(2) specify that the rated burst pressure of a rupture disc for DOT 3A, 3AA, 3AL, 3E, and 39 cylinders, as well as that for UN ISO 9809–1, ISO 9809–2, ISO 9809–3, and ISO 7866 cylinders containing oxygen, compressed; compressed gas, oxidizing, n.o.s.; or nitrogen trifluoride, must be 100 percent of the cylinder minimum test pressure with a tolerance of 'plus zero' to minus 10 percent.

In response to PHMSA's NPRM entitled "Hazardous Materials: Miscellaneous Amendments" published on September 29, 2010 [75 FR 60017] under Docket No. PHMSA–2009–0151 (HM–218F), HMT Associates submitted a late-filed comment that identified a potential discrepancy between the HMR and CGA S–1.1. Specifically, this commenter stated the HMR have different PRD settings than CGA S–1.1 for DOT 39 cylinders that make it virtually impossible to comply with both the HMR and CGA S–1.1. Sections 173.302(f)(2) and 173.304(f)(2) require the rated burst pressure of a rupture disc for DOT 3A, 3AA, 3AL, 3E, and DOT 39 cylinders to be 100 percent of the cylinder minimum test pressure with a tolerance of 'plus zero' to minus 10 percent, whereas section 4.2.2 of CGA S–1.1 requires the rated burst pressure of the rupture disc on DOT 39 cylinders to be not less than 105 percent of the cylinder test pressure.

In this NPRM, PHMSA proposes to revise § 173.301(f) as it applies to DOT 39 cylinders to alleviate any confusion and conflict between the PRD requirements in § 173.301(f) and those in §§ 173.302(f)(2) and 173.304(f)(2) with respect to minimum burst pressure of pressure relief devices on a DOT 39 cylinder used for the transport of compressed and liquified oxidizing gases by air. PHMSA notes that the revision made to § 173.301(f) was based on option 2 presented in HMT Associates comment to rulemaking HM–218F and submitted as petition P–1580. PHMSA requests comments from the compressed gas industry regarding this course of action.

P–1582

Water Systems Council submitted P–1582 requesting that PHMSA revise § 173.306(g), which provides a limited quantity exception for water pump system tanks, by permitting tanks manufactured to American National Standards Institute (ANSI) and Water Systems Council (WSC) standard PST–2000–2005(2009) to be authorized for transport.

ANSI and WSC standard PST–2000–2005 is an industry standard that prescribes minimum performance and construction requirements for pressurized storage tanks for service in water well systems with a maximum factory pre-charge pressure of 40 psig (280 kPa), to be operated in ambient air temperatures up to 120 °F (49 °C), with maximum working pressures not less than 75 psig (520 kPa) and not greater than 150 psig (1,000 kPa) and tank volumes not exceeding 120 gallons (450 L). The standard was developed by a group of WSC members comprised of leading U.S. manufacturers of pressurized water storage tanks for water wells to define and promote—through voluntary written standards—minimum performance and construction requirements for pressurized water storage tanks for service in water well systems. Incorporating the standard into the HMR will provide minimum requirements for pressurized water storage tanks for water wells that provide at least an equivalent level of safety as currently provided in the HMR.

PHMSA identified 38 U.S. based manufacturers or distributors of water pump system tanks, most of which would be classified as a small business using SBA size standards (<500 employees). There are no costs associated with this proposal because it is already incorporated into the regulations. This proposal will authorize tanks to be tested to current standards in the HMR or the manufacturer's specified minimum working pressure. Further, it allows water pump system tanks to be charged with helium in addition to the currently authorized nitrogen. The revisions would provide greater flexibility to stakeholders without compromising safety. Therefore, in this NPRM, PHMSA is proposing these recommended changes.

P–1592

The CGA submitted P–1592 requesting that PHMSA replace the 2005 edition of CGA S–1.1, *Pressure Relief Device Standards-Part 1-Cylinders for Compressed Gases* with the 2011 edition as referenced in the HMR.

CGA S–1.1 provides standards for selecting the correct pressure relief device to meet the requirements of § 173.301(f) for over 150 gases. It provides guidance on when a pressure relief device can be optionally omitted and when one's use is prohibited, as well as direction on their manufacture, testing, operational parameters, and maintenance.

PHMSA identified approximately 5,000 companies that would be subject to this standard, with the majority being classified as small businesses using SBA size standards (<500 employees).

This minor update to the regulations improves the timeliness and clarity of industry standards that are IBR. It supports the goal of facilitating voluntary compliance and reducing the burdens associated with references to outdated material. Therefore, in this NPRM, PHMSA is proposing these recommended changes.

P–1596

Chemically Speaking, LLC submitted P–1596 requesting that PHMSA revise the HMR pertaining to salvage drums. Specifically, they propose amending § 173.3(d) to allow Class 4 and Class 5 materials to be placed in salvage cylinders.

For over 30 years the gas industry, public agencies, gas cylinder users, and gas disposal companies have used open head salvage cylinders fabricated to ASME specifications to quickly and safely contain and transport leaking cylinders to locations where they can be safely emptied or repaired. Salvage cylinders were originally permitted under special permits (exemptions) specific for each design,[5] but these exemptions were adopted into the HMR in 2005. Class 4 or 5 materials were not included in the adoption; however, there is no preamble language in the rules specifically indicating reasons for the exclusion. A salvage cylinder made to ASME specifications as a pressure vessel and packaged as prescribed in § 173.3(d) is a more robust package than a salvage container, which is used for liquids or solids. The addition of a pyrophoric material will not add a new hazard in the use of salvage cylinders, as some of the compressed gases that are also authorized have pyrophoric properties, such as silane, 2.1 (UN2203) or phosphine, 2.3 (UN2199). Moreover, these gases also have the added hazards of high pressure (1,500 psig), with the latter also being a toxic material.

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[5] DOT–E 9507, 9781, 9991, 10022, 10110, 10151, 10323, 10372, 10504, 10519, 10789, 10987, 11257, 11459, 12698, 12790, and 12898.

Over a period of four years (2006–2010), the use of salvage pressure receptacles was debated at the UN Subcommittee on Transportation of Dangerous Goods. Numerous papers were submitted in support of this effort. In the December 2010 session, the use of salvage pressure receptacles was approved and published in "Amendments to the sixteenth revised edition of the Recommendations on the Transport of Dangerous Goods, Model Regulations." The amendments include the authorization of salvage cylinders for Class 4 and 5 materials.

This change will have a positive economic impact on owners of salvage cylinders as this will increase the instances where a salvage cylinder can be used. Many metal alkyl users and gas suppliers already own a salvage cylinder. There will be a negligible burden for procedures to be updated to include these cylinders. Therefore, in this NPRM, PHMSA is proposing these recommended changes; however, we do not propose additional reporting requirements.

P–1622

Worthington Cylinders submitted P–1622 requesting that PHMSA allow the internal volume of DOT 39 cylinders not to exceed 75 cubic inches, which will be reflected in revisions to the entries for cyclopropane, ethane, and ethylene in the § 173.304a(a)(2) table to include this limit in new footnote "Note 9." This proposal would also clarify the 75 cubic inch limit for DOT 39 cylinders by adding it in a new sentence to § 173.304a(d)(3). Worthington Cylinders states its justifications for this petition are as follows:

> As discussed in my May 2011 letter, 49 CFR went through a rewrite in 2001. At this point in time, Paragraph 173.304 titled *"Charging of cylinders with liquefied compressed gas"* was divided into two specific sections, 173.304 and 173.304a. Previous to the change in 2001, Note 9 was present in the Table of Paragraph 173.304. This note stated "When used for shipment of flammable gases, the internal volume of a Specification 39 cylinder must not exceed 75 cubic inches." This would apply specifically to cylinders containing liquefied compressed gases. At the same time, Paragraph 173.302 titled *"Charging of cylinder with non-liquefied compressed gases"* stated in subsection 4 that for "Specification 39 cylinders for flammable gases, the internal volume may not exceed 75 cubic inches." This paragraph would specifically pertain to cylinders charged with non-liquefied gases.
>
> The problem lies with each edition of 49 CFR published since 2001. Paragraph 173.304a is not making any statement limiting the Specification 39 cylinder volume when charging the cylinder with liquefied flammable gases, yet paragraph 173.302a(3) limits the flammable compressed gas in a Specification 39 cylinder to a maximum of 75 cubic inches. Clearly, DOT would not want to authorize a liquefied flammable compressed gas for any volume Specification 39 cylinder when the specifications limit the volume to 75 cubic inches for a flammable compressed gas. I will use propane as an example: Propane can be shipped as a compressed gas or a liquefied compressed gas. If it is shipped as a compressed gas the specifications limit the shipper to a container 75 cubic inches or smaller (49 CFR 173.302). If the shipper was shipping propane as a liquefied compressed gas there are no limitations in the regulations on the Specification 39 cylinder volume (49 CFR 174.304a). This clearly makes no logical sense when propane expands 270 times its volume from a liquid to a vapor. Why would the stored energy for a Specification 39 cylinder with vapor be limited to 75 cubic inches and for a liquid have no limitations?
>
> Specification 39 cylinders have a proven track record. Millions of these cylinders have been manufactured and used for the safe and reliable storage and transportation of compressed gases and liquefied compressed gases. This proven safety and reliable track record includes 2.1 flammable liquefied compressed gases limited to 75 cubic inch capacity. Worthington's concerns of using up to 1526 cubic inch volume cylinders for 2.1 flammable liquefied compressed gases centers around the puncture resistance and corrosion resistance which are "real life" issues in the transportation of cylinders. Releasing basically four gallons of propane from a Specification 39 cylinder from a puncture or corrosion is not in the best interest of safety. Worthington strongly recommends that PHMSA review the following and consider it as immediate changes to 49 CFR 173.304a and 173.304(d)(3).

PHMSA agrees with the petitioner and will permit valves other than those listed in CGA S–1.1 to be used by adding the word "may" to this phrase in the regulatory text: "a CG–7 pressure relief valve may be used." In this NPRM, PHMSA is proposing these recommended changes.

Worthington Cylinders also asked PHMSA to explain what is meant by "chemical under pressure" in § 173.302a(a)(3) as it relates to this phrase: "or 50L for chemical under pressure." Section 173.302a(a) describes detailed filling requirements for the shipment of non-liquefied (permanent) compressed gases in specification cylinders. Specifically, § 173.302a(a)(3) limits the capacity of a DOT 39 cylinder to 1.23 L (75 in^3) when the cylinder is filled with a Division 2.1 material or 50 L (3050 in^3) when the cylinder is filled with a chemical under pressure. PHMSA revised §§ 173.301b and 173.302a in a final rule [Docket No. PHMSA–2012–0027 (HM–215L); 78 FR 988] to increase the maximum allowable water capacity for non-refillable cylinders containing chemicals under pressure to 50 liters (3050in^3); therefore, this request has been addressed.

The phrase in question was added to the HMR under a final rule published January 7, 2013 (HM–215L; 78 FR 988). Under that final rule we introduced new HMT entries for "chemical under pressure," assigned authorized non-bulk and bulk packaging, and included other safety requirements such as quantity and filling limits. See §§ 172.102, Special Provision 362, and 173.335. In the HM–215L final rule (78 FR 989), PHMSA discussed a comment received from 3M in support of the proposal; however, 3M requested that PHMSA authorize the use of non-refillable cylinders (*i.e.*, DOT 39s) larger than 1.25 liters containing flammable gas consistent with the UN Model Regulations. We noted our " intent regarding the chemical under pressure entry was to comprehensively align the requirements of this entry with international standards." In the HM–215L final rule, we revised the packaging requirements for chemical under pressure to authorize the use of nonrefillable cylinders larger than 1.25 liters for chemical under pressure, hence, the inclusion of "or 50L for chemical under pressure" for DOT 39 cylinders in § 173.302a(a)(3). This language applies to "chemicals under pressure" as described in Special Provision 362 and must not be applied to flammable gases. PHMSA is also looking to resolve the discrepancy created by this allowance for larger capacities for this cylinder type because it exceeds the size limits authorized under the design specifications for DOT 39 cylinders in § 178.65. In this NPRM, PHMSA is proposing to revise § 173.302a(a)(3) to clarify any confusion on the applicable capacity limits.

P–1626

The CGA submitted P–1626 requesting that PHMSA IBR CGA C–1, *Methods for Pressure Testing Compressed Gas Cylinders,* Tenth Edition (2009) and revise the regulations regarding the retesting of cylinders by the hydrostatic test as they are not only unclear to requalifiers, but also missing necessary information rendering the regulations unenforceable. Although the petition proposed the Tenth Edition, currently there is an Eleventh Edition (2016) available. PHMSA is proposing to IBR this most current version and requests comment regarding this action.

PHMSA identified approximately 980 entities that conduct hydrostatic testing, including cylinder requalifiers, retesters, and manufacturers.

In this NPRM, PHMSA is proposing to adopt clarifying language and IBR the CGA C–1 standard, as proposed in P–1626, as it provides more detailed instructions and illustrations than what is possible in the HMR and addresses the deficiencies detailed in the petition. The CGA requests that this proposed IBR apply to the following sections: §§ 178.36, 178.37, 178.38, 178.39, 178.42, 178.44, 178.45, 178.46, 178.47, 178.50, 178.50, 178.51, 178.53, 178.55, 178.56, 178.57, 178.58, 178.59, 178.60, 178.61, 178.65, 178.68, 180.205, and 180.209. The incorporation of CGA C–1, 2016 supports the goal of increasing compliance and improving overall safety as its reference increases clarity, provides enhanced guidance, and reduces confusion between CGA current dates and IBR versions. Specific clarifications include instructions for performing volumetric expansion tests using both the water-jacket and direct expansion methods, as well as a provision for retesting in case of equipment failure or operator error. Revising the HMR to IBR CGA C–1 will provide the desired clarification without imposing requirements that are potentially costly or unnecessarily difficult.

P–1628

The CGA submitted P–1628 requesting that PHMSA IBR CGA C–3–2005, Reaffirmed 2011, *Standards for Welding on Thin-Walled, Steel Cylinders,* Seventh Edition as material incorporated by reference in the HMR. Presently, the HMR reference CGA C–3–1994, *Standards for Welding on Thin-Walled Steel Cylinders,* Fourth Edition.

This publication contains information on welding process qualification, welding operator qualifications, tensile testing, bend testing, and radiographic inspection. The changes between the C–3–1994, Fourth Edition and the C–3–2005, Reaffirmed 2011, Seventh Editions were predominantly editorial or technical in nature. The significant technical changes are summarized as follows and can be reviewed in detail in the docket to this petition:

- Added section to the testing criteria to employ the use of macro etch samples in lieu of weld guided bend test and weld tensile testing when the cylinder size would not permit securing of proper size specimens.
- Clarified the weld bend testing procedure, weld bend testing tooling, and proper clearances that are required in the tooling.
- Clarified definitions for the welding procedure qualification and the welding operator weld qualification.
- Added tolerance section to C–3–2005, Reaffirmed 2011 that indicates the plus and minus tolerances when a specific dimensional tolerance is indicated in the publication.
- Added drawings to the C–3–2005, Reaffirmed 2011 illustrating different weld joint designs.
- Reviewed C–3–2005, Reaffirmed 2011 for conditional wording and revised it for enforceable wording.

PHMSA identified approximately 5,000 companies that would be subject to this standard, with the majority being classified as small businesses using SBA size standards (<500 employees).

This minor update to the regulations improves the timeliness and clarity of industry standards that are IBR. It supports the goal of facilitating voluntary compliance and reducing the burdens associated with references to outdated material. Therefore, in this NPRM, PHMSA is proposing these recommended changes.

P–1629

The CGA submitted P–1629 requesting that PHMSA IBR CGA C–14–2005, Reaffirmed 2010, *Procedures for Fire Testing of DOT Cylinder Pressure Relief Device Systems,* Fourth Edition, as a material incorporated by reference in the HMR. Presently, the HMR reference CGA C–14–1979, *Procedures for Fire Testing of DOT Cylinder Pressure Relief Device Systems,* First Edition. Since the incorporation of this edition, CGA has revised the publication in 1992, 1999, 2005, and reaffirmed the publication in 2010.

This standard describes test procedures and apparatus for fire testing compressed gas cylinder safety (pressure) relief devices as was required by former § 173.34(d). The procedures are applicable for cylinders that are less than 500 pounds water capacity and designed to provide a means of testing to DOT requirements anywhere with reliable test data and repeatable test results. The changes from the 1979 First Edition to the 2005 and Reaffirmed 2010 editions of CGA C–14 were predominantly editorial or technical in nature. The significant technical changes are summarized as follows and can be reviewed in detail in the docket to this petition:

- Permitted the use of an alternate lading. If the intended lading would present an increased safety hazard during the test procedure (such as the use of poisonous or flammable gas), the cylinder may be charged with a typical liquefied or non-liquefied gas. Gases with essentially similar physical properties may be classified as typical.
- Added the Bonfire Test Method to the publication. This permitted the Board of Explosives (BOE) test method to be used to qualify pressure relief device systems. The Bonfire Test Method was successfully used to qualify pressure relief device systems for decades.
- Clarified what information is to be recorded before and during the actual test.
- Increased the water capacity of a cylinder that can be fire tested from 500 lb. water capacity to 1000 lbs. water capacity to permit a test method for all 4 series cylinders.
- Reviewed C–14–2005, Reaffirmed 2010 for conditional wording and modified it to replace conditional wording with enforceable wording, wherever appropriate.

PHMSA identified approximately 5,000 companies that would be subject to this standard, with the majority being classified as small businesses using SBA size standards (<500 employees).

This minor update to the regulations improves the timeliness and clarity of industry standards that are IBR. It supports the goal of facilitating voluntary compliance and reducing the burdens associated with references to outdated material. Therefore, in this NPRM, PHMSA is proposing these recommended changes.

P–1630

The CGA submitted P–1630 requesting that PHMSA revise the HMR requirements for DOT 4L welded insulated cylinders. Specifically, the CGA requests PHMSA make two changes:

(1) Add a Definition for "Recondition" to § 180.203

The CGA states "[t]he term 'recondition' is distinct from work presently defined as repair or rebuild and describes work on a part or component of a DOT 4L welded insulated cylinder that does not involve repair or rebuilding of the inner containment vessel. For purposes of this petition, the inner containment vessel refers to the term cylinder as defined in § 171.8. In addition, DOT 4L welded insulated cylinder refers to that packaging defined in § 178.57." The CGA did not propose language for the definition.

The HMR prescribe the requirements for reconditioning DOT 4L cylinders in § 180.211, further specifying additional requirements for rebuilding DOT 4L cylinders in paragraph (e). "Recondition" is a word that describes a process that applies to several cylinder packaging types under the HMR. PHMSA is concerned that adding a definition for "recondition" that applies only to DOT 4L specification cylinders would cause confusion that may reduce the safe application of these regulations. Therefore, PHMSA is not proposing in this NPRM to define a "reconditioned cylinder" in § 180.203.

(2) Amend Paragraphs §§ 180.211(c) and 180.211(e) To Clarify when a Hydrostatic Test Must Be Performed on the Inner Containment Vessel After the DOT 4L Welded Insulated Cylinder has Undergone Repair as Interpreted in DOT Letters of Interpretation Reference Nos. 11–0237 and 12–0065

Reference No. 11–0237 states: "[t]he term 'rebuild' is defined in § 180.203 as the replacement of a pressure part (*e.g.*, a wall, head, or pressure fitting) by welding. While a 'rebuild' would be required when the inner vessel of a DOT–4 series cylinder is compromised, it is not the only scenario that would constitute a 'rebuild.' DOT–4 series cylinders requiring rebuild, as defined in § 180.203, must do so in conformance with § 180.211. In addition, DOT 4L cylinders must meet additional requirements for repair specified in § 180.211(e) including proof pressure testing each inner containment vessel at two times its service pressure. DOT 4L cylinders which undergo procedures that are not defined as a rebuild in § 180.203 are not subject to the requirements of § 180.203(e)."

Reference No. 12–0065 states: "[t]he term 'repair' is defined in § 180.203 as a procedure for correction of a condemned cylinder that may involve welding. A repair is not limited to the correction of a condemned cylinder that has had only its inner vessel compromised; therefore, DOT–4 series cylinders requiring repair, as defined in § 180.203, must be done in conformance with § 180.211. In addition, DOT 4L cylinders must meet additional requirements for repair specified in § 180.211(c) including being pressure-tested in conformance with the specifications under which the cylinder was originally manufactured. DOT 4L cylinders which undergo procedures that are not defined as a repair in § 180.203 are not subject to the requirements of § 180.211(c) including the requirement to be pressure-tested in conformance with the specifications under which the cylinder was originally manufactured."

The CGA notes its understanding that these DOT interpretations "state that testing the inner containment vessel after reconditioning, as defined below, are relatively new and prior to these interpretations no such testing had taken place." The CGA further notes that it "knows of no incidents related to the lack of such testing."

While the requirements the petitioner is referring to have existed since 2002 [67 FR 51626]—and prior to that to some extent in former § 173.34—PHMSA agrees with the petitioner that adding language to clarify when a rebuilt DOT 4L cylinder and its components need to be pressure tested would make this requirement easier to understand; therefore, PHMSA is revising § 180.211(c) to include the clarifying language about this requirement included in letter Reference No. 11–0237.

The CGA further states its "purpose for requesting amendments to §§ 180.211(c) and 180.211(e) is to clarify that certain work on parts and components of a DOT 4L welded insulated cylinder other than the inner containment vessel does not require hydrostatic testing of the inner containment vessel. The addition and definition of the term 'recondition' with respect to these DOT 4L welded insulated cylinders identifies this work and enables verification of the integrity of such work using a pneumatic leak test at 90% of service pressure for which the DOT 4L welded insulated cylinder was designed and tested and by using a mass spectrometer detection system."

As previously stated, while this requirement has existed since 2002, PHMSA agrees with the petitioner that revising the language in § 180.211(e) to include the language in letter Reference No. 12–0065 would improve the understanding of this requirement and, thereby, possibly improve safety.

In this NPRM, PHMSA is proposing to amend § 180.211(c) and (e) for clarification as petitioned.

IV. Special Permits

In the ANPRM, PHMSA considered proposing revisions to adopt certain special permits into the HMR. Specifically, PHMSA proposed changes based on DOT–SPs 12929, 13318, and 13599. We are no longer proposing changes in this NPRM in association with these special permits because: (1) DOT–SP 12929 was determined not suitable for adoption under rulemaking HM–233F (80 FR 5340; January 30, 2015); and (2) DOT–SPs 13318 and 13599 were adopted under HM–233F (81 FR 3635; January 21, 2016).

Since publication of the ANPRM, we have considered proposing revisions to the HMR based on adoption of DOT–SP 14237. For over ten years, PHMSA has authorized the use of certain non-bulk DOT-specification cylinders to transport specific adsorbed gases under special permits. DOT–SP 14237, first issued on December 22, 2006, is general in its application in that it does not require the use of drawings and applications for DOT-specification cylinders that are specific to one company. Adopting this special permit would reduce costs associated with application and management, while also increasing safety and expanding the use of DOT-specification cylinders for adsorbed gases. PHMSA is not aware of any incident or investigation concerning the performance of packaging and transport under this special permit since its issuance; therefore, PHMSA is proposing in this NPRM to adopt the special permit into the HMR.

Furthermore, PHMSA added provisions to the HMR for shipping adsorbed gases in a final rule issued on January 7, 2015 [Docket No. PHMSA–2013–0260 (HM–215M); 80 FR 1075] applicable to UN pressure receptacles. Specifically, these changes incorporated international standards designed to allow the transportation of certain gases when they are adsorbed onto a porous solid material in a non-bulk UN standard pressure receptacle. Two commenters to the HM–215M NPRM requested that PHMSA also permit adsorbed gases in DOT-specification cylinders. One commenter, Entegris, Inc., proposed regulatory text that includes DOT cylinder specifications and provisions not previously authorized under DOT special permit. PHMSA chose not to accept the comment and did not adopt the changes at that time; however, PHMSA invites the public to review Entegris, Inc.'s comments under Docket No. PHMSA–2013–0260 at *www.regulations.gov* and to comment on the safety and costs associated with its proposal and its possible inclusion under new § 173.302d.

V. Agency Initiated Editorial Corrections

In an ongoing attempt to improve safety, PHMSA regularly reviews and revises the HMR to correct errors and clarify any regulations that are unclear or confusing. PHMSA is adopting the following issues of concern into this NPRM and seeks comment regarding the changes.

Section 107.803

Section 107.803 provides approval procedures for independent inspection agencies (IIA) conducting cylinder inspections and verifications as required by parts 178 and 180. In its application for approval status, the IIA must provide information, including a detailed description of its qualifications and ability both to perform and to verify inspections. However, at present, the application information requirements of § 107.803(c)(3) only reference part 178. In this NPRM, PHMSA is proposing to revise § 107.803(c)(3) to include part 180, subpart C for consistency.

Section 107.805

Section 107.805 provides approval procedures for persons to inspect, test, certify, repair, or rebuild a cylinder in accordance with the HMR. PHMSA is proposing to revise the requirements for application for approval of cylinder requalifiers to include a reference to the option of having a mobile cylinder requalification unit (*i.e.,* a mobile unit). See § 180.203 for further discussion.

Section 178.70

Section 178.70 provides approval for the manufacture of UN pressure receptacles (*i.e.,* cylinders). Current § 178.70(d) restricts the user (manufacturer) from the flexibility that is provided in the UN/ISO standards. The regulation as constructed results in additional cost and delay without any added safety. The UN/ISO standards are developed based on performance testing and include adequate testing for a wide range of design-type modifications. All UN/ISO standards to which the original design type conforms permit certain modifications to an approved design type. PHMSA has received several requests to revise this regulation to allow an authorized manufacturer to benefit from the UN Model Regulations and produce UN/ISO cylinders. In this NPRM, PHMSA is proposing to adopt language consistent with UN/ISO standards to reduce the need for approvals.

Section 180.203

Section 180.203 specifies definitions that apply to cylinder use, qualification, and maintenance. PHMSA has encountered frequent problems regarding this section and is recommending the following revisions:

(1) Define and Incorporate "Mobile Unit" Requalification Operations

The hazardous materials program procedures of 49 CFR part 107 for approval of cylinder requalifiers do not specify the option of a "mobile cylinder requalification unit." The intent of this operation is for a cylinder requalifier to be able to perform its requalifying function within a 100-mile radius of its primary place of business. To operate, a mobile cylinder requalifier must adhere to the requirements in a PHMSA-issued approval letter.

Since companies may not be familiar with the option to offer mobile testing of cylinders to their customers through an approval by the Associate Administrator, PHMSA is proposing in this NPRM to add a definition of "mobile unit" to the HMR in § 180.203 and a new paragraph in § 107.805 identifying application requirements for mobile units. These proposed revisions would enhance requalifiers' ability to perform cylinder requalifications under the scope of the HMR.

(2) Revise Definition of Proof Pressure Test for Cylinders

The HMR no longer prescribe modified hydrostatic pressure testing, which has been and continues to be the method of low-pressure testing of fire extinguishers. Not all retesters know that proof pressure testing allows the test to be performed with just air (no water), therefore taking approximately one-third the time of a modified hydro test without wasting water. The required test is only looking for leaks not determining a cylinder expansion percentage rate. We expect that use of a proof pressure will pass along cost savings to a requalifier.

The HMR prescribes in § 180.209(e) (for DOT 4-series cylinders) and (j) (for fire extinguishers) that a proof pressure test is authorized. In § 180.203, proof pressure test is defined as "a pressure test by interior pressurization without the determination of expansion of the cylinder" (*i.e.,* a leak test). In this NPRM, PHMSA is proposing to revise the definition of proof pressure test to specify that a liquid or a gas may be used to conduct the test. However, we note that the safety risk for conducting this test is substantially more using gas such as air versus a liquid such as water although this risk is lessened for low-pressure cylinders such as fire extinguishers. We seek comment on the impact of this revision and whether this clarification achieves the intent of enhancing compliance by specifying the air may be used for a proof pressure test. We also invite comment on a better method for communicating that a gas may be used for a proof pressure test, preferrable for low-pressure cylinders.

Section 180.207

Section 180.207(d) authorizes the use of ISO 6406 to requalify UN refillable seamless steel cylinders and UN refillable seamless steel tube cylinders. The current ISO 6406 has a limitation of 150 liters for the size of these cylinders, which is substantially less than the maximum volume of a UN refillable seamless steel tube (3,000 liters). PHMSA has received several requests for interpretation of this regulation and its application to the requalification of UN seamless steel pressure receptacles larger than 150 liters. PHMSA responded to these requests through a letter of clarification issued under Reference No. 13–0146, stating that § 180.207(d)(1) authorizes the requalification of seamless steel UN pressure receptacles larger than 150 liters. In addition, PHMSA Engineering staff is participating in an ISO/TC58/SC4 working group that is considering a revision to the ISO 6406 standard to include pressure receptacles larger than 150 liters; therefore, PHMSA is proposing in this NPRM to add the phrase "larger than 150 liters" after "including MEGC's pressure receptacles" to clarify that the use of larger UN pressure receptacles is permitted under § 180.207(d)(1).

Section 180.213

Section 180.213 prescribes marking requirements for the visual inspection of cylinders (see § 180.213 paragraphs (f)(5), (f)(8), and (f)(9)). In the past, PHMSA has allowed a visual (V) requalifier identification number (*i.e.,* a V number) to be marked in the same manner as a requalifier identification number (RIN) marking per § 180.213. V number markings have four different options for markings; however, PHMSA issues approval letters that permit a V number marking yet only provide three of the four available marking options and do not reference § 180.213.

Section 180.213 of the HMR should include the marking requirements for a V number consistent with those for an RIN. The V number could be placed in a square pattern as shown in § 180.213. However, marking a V number, which is a single letter followed by six numbers, in a square pattern like an RIN, which is a single letter followed by three numbers, requires clarification, as the marks vary. Including the marking requirements for V numbers into § 180.213 will make authorized options for these identifiers to be placed on a cylinder more widely understood.

PHMSA is proposing in this NPRM to include this V number marking in § 180.213(g).

Section 180.215

Section 180.215(a)(6) requires that a person who requalifies, repairs, or rebuilds cylinders must maintain in their records and report information contained in each applicable CGA or ASTM standard incorporated by reference under § 171.7 of the HMR that applies to requalifier activities. In this NPRM, PHMSA is proposing to remove the last sentence of paragraph (a)(6) of this section to reduce confusion, as it essentially repeats what is requested in the first sentence of this paragraph.

VI. Section-by-Section Review

Section 107.803

Section 107.803(c)(3) states that each application to obtain approval to perform duties as an IIA must contain a detailed description of the applicant's qualifications and ability both to perform the inspections and to verify the inspections required by part 178 of the HMR or under the terms of a DOT special permit. In this NPRM, we propose to revise § 107.803(c)(3) to clarify that the applicant's description of his or her ability to perform and verify inspections must include those required under 49 CFR part 180, subpart C.

Section 107.805

Section 107.805(c) prescribes additional information an application must contain to obtain approval from PHMSA to requalify cylinders and pressure receptacles. In this NPRM, we propose to add paragraph (c)(5) to this section to clarify what information must be added to the application to authorize mobile unit requalifiers and the information necessary to acquire approval. We also propose to make a conforming edit to paragraphs (c)(3) and (c)(4) by moving the "and" clause from paragraph (c)(3) to (c)(4).

Section 171.7

Section 171.7 lists reference standards and regulations incorporated by reference into the HMR that are not specifically set forth in the HMR. Paragraph (g) incorporates into the HMR publications issued by the American Society of Mechanical Engineers, specifically, the ASME Boiler and Pressure Vessel Code. In this NPRM, we propose to revise the list of sections in paragraph (g)(1) to include § 173.302d based on the addition of this new section to the HMR and its reference to this standard in § 173.302d(b)(11). Also, paragraph (n) specifically incorporates into the HMR publications issued by the Compressed Gas Association, an industrial and medical gas association that, among others, develops standards and practices for the safe transportation of gases and their containers. In this NPRM, we propose to add to § 171.7(n) the latest CGA publication C–1, *Methods for Pressure Testing Compressed Gas Cylinders.* We also propose to update the editions of CGA publications C–3, C–6, C–14, and S–1.1 already incorporated in the HMR. The remaining changes to paragraph (n) are editorial based on PHMSA's initiative to renumber the list to accommodate the new publications and add missing section number symbols, punctuation, and spaces. Also, note a weblink in the **ADDRESSES** section of the introduction to this rulemaking to review these publications during the comment period. The documents are summarized below.

The ASME publication is 2015 ASME *Boiler and Pressure Vessel Code (ASME Code) Section VIII—Rules for Construction of Pressure Vessels Division 1.* The publication provides requirements applicable to the design, fabrication, inspection, testing, and certification of pressure vessels operation at either internal or external pressures exceeding 15 psig. Division 1 also contains mandatory and nonmandatory appendices detailing supplementary design criteria, nondestructive examination and inspection acceptance standards. During the open comment period of this NPRM, this publication is freely available on the ASME Web site at: *http://go.asme.org/PHMSA-ASME-PRM.*

The Compressed Gas Association publications include the following:

(1) CGA C–1, *Methods for Pressure Testing Compressed Gas Cylinders* (2016). During the open comment period of this NPRM, this publication is freely available on the CGA Web site at: *https://www.cganet.com/customer/dot.aspx.* This publication provides the standard(s) for pressure testing of compressed gas cylinders for many newly manufactured cylinders and requalification of cylinders. This standard contains operating and equipment requirements necessary to perform pressure testing of compressed gas cylinders properly. Tests include the water jacket method, direct expansion method, and proof pressure method.

(2) CGA C–3, *Standards for Welding on Thin-Walled Steel Cylinders* (2005) (Reaffirmed 2011). During the open comment period of this NPRM, this publication is freely available on the CGA Web site at: *https://www.cganet.com/customer/dot.aspx.* This publication contains information on welding process qualification, welding operator qualifications, tensile testing, bend testing, and radiographic inspection. Additionally, this publication clarifies dimensional tolerances and when weld macro etch can be used for weld process approval and welder qualification approval.

(3) CGA C–6, *Standards for Visual Inspection of Steel Compressed Gas Cylinders* (2013). During the open comment period of this NPRM, this publication is freely available on the CGA Web site at: *https://www.cganet.com/customer/dot.aspx.* This publication provides cylinder users (requalifiers, owners, fillers, operators, etc.) with criteria to accept, reject, and condemn steel compressed gas cylinders. This standard does not cover all circumstances for each individual cylinder type and condition of lading. Inspection procedures include preparation of cylinders for inspection, exterior inspection, interior inspection (if required), nature and extent of damage to be looked for, and for some tests, the conditions of the cylinder, etc. A sample inspection report is provided in an appendix.

(4) CGA C–14, *Procedures for Fire Testing of DOT Cylinder Pressure Relief Device Systems* (2005) (Reaffirmed 2010). During the open comment period of this NPRM, this publication is freely available on the CGA Web site at: *https://www.cganet.com/customer/dot.aspx.* This publication describes test procedures and apparatus for fire testing compressed gas cylinder safety (pressure) relief devices as required by the HMR. The procedures are applicable for cylinders that are less than 500 lbs. water capacity and designed to provide a means of testing to the HMR anywhere with reliable test data and repeatable test results.

(5) CGA S–1.1, *Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases* (2011). During the open comment period of this NPRM, this publication is freely available on the CGA Web site at: *https://www.cganet.com/customer/dot.aspx.* This publication provides the standard(s) for selection of the correct pressure relief device that is required to meet the requirements of the HMR for over 150 gases. It provides guidance on when a pressure relief device can be optionally omitted, and when the use of a pressure relief device is prohibited. It provides direction and guidance on the manufacture and testing of pressure relief devices as well as the operation parameters and maintenance.

Section 171.23

Section 171.23 prescribes requirements for transport of specific materials and packaging under international transportation standards such as the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air. Paragraph (a)(4) outlines requirements for filling of cylinders for export or use onboard a vessel. In this NPRM, we propose to revise the marking requirements consistent with changes made to § 180.213.

Section 172.400a

Section 172.400a(a)(1) prescribes exceptions from labeling for Dewar flasks or cylinders that comply with the provisions of this paragraph and are durably marked and labeled in conformance with CGA C–7. In this NPRM, we propose to revise paragraph (a)(1) to clarify how this labeling exception applies to overpacks.

Section 173.3

Section 173.3(d)(1) prescribes how a damaged or leaking cylinder that contains hazardous material may be transported in a non-DOT-specification fully opening hinged-head or removable head steel salvage cylinder. In this NPRM, we propose to permit cylinders that contain Class 4 or 5 materials to also use this exception. In addition, because of the proposal to include Class 4 or 5 materials as authorized material for salvage cylinders, we are reformatting the regulatory text to reference those materials in damaged or leaked cylinders that are excluded from being allowed to be overpacked in a salvage cylinder rather than listing those that are authorized.

Section 173.301

Section 173.301 provides the general requirements for shipment of compressed gases and other hazardous material in cylinders. In this NPRM, we propose to clarify the marking requirements of paragraph (a)(9), specifically use of the ‘‘OVERPACK’’ mark to indicate the combination packaging contains inner packagings that conform to specifications. Additionally, in paragraphs (c) and (f), we propose an editorial revision to the section citation of CGA S–1.1 to correctly read 9.1.1. Finally, we propose to revise paragraph (f) to clarify the minimum burst pressure requirements for DOT 39 cylinders used to transport compressed or liquefied oxidizing gases.

Section 173.302

Section 173.302(a)(2) prescribes the requirements for adsorbed gases. In this NPRM, we propose to include references to new § 173.302d applicable to DOT-specification cylinders and to replace reference to ‘‘UN cylinders’’ with ‘‘UN pressure receptacles’’ for consistency with other parts of the HMR.

Section 173.302a

Section 173.302a(a)(3) prescribes the filling requirements for DOT 39 cylinders that contain Division 2.1 gas or chemical under pressure. In this NPRM, we propose to clarify the capacity (internal volume) requirements to make it clear that the 1.23 L limit applies to Division 2.1 material and the 50 L limit applies to chemical under pressure classed as Division 2.1 (see § 172.102, special provision 362). We also propose an editorial correction to the start of paragraph (a)(3) by removing the non-italicized ‘‘DOT 39.’’

Section 173.302d

In this NPRM, we propose to add new § 173.302d prescribing requirements for transportation of adsorbed gases in DOT-specification cylinders. The requirements of this new section are based on the adoption of special permit DOT–SP 14237 provisions.

Section 173.304a

Section 173.304a prescribes the maximum permitted filling density and authorized cylinders for specific gases. In this NPRM, we propose to add new paragraph (a)(3) to § 173.304a to clearly state that the maximum capacity (internal volume) of a DOT 39 cylinder containing liquefied flammable gas is 1.23 liters (75 in^3). We also propose to require these cylinders to be equipped with a pressure relief valve, as prescribed in CGA S–1.1, unless the material is not listed in CGA S–1.1, in which case a CG–7 pressure relief valve must be used.

Section 173.306

Section 173.306 provides exceptions from the requirements of the HMR for limited quantities of compressed gas. Paragraph (g) excepts water pump system tanks charged with compressed air or limited quantities of nitrogen to not over 40 psig from labeling and specification packaging when shipped in conformance with the requirements prescribed in the paragraph. In this NPRM, we propose to revise § 173.306(g) to authorize tanks to be tested to current standards in the HMR or the manufacturer's specified maximum working pressure, to allow water pump system tanks to be charged with helium, to clarify that transportation by aircraft is not an authorized mode of transport.

Section 173.309

In this NPRM, we propose to revise § 173.309 to state that the requirements applicable to fire extinguishers also apply to those cylinders used as part of a fire suppression system.

Section 173.312

Section 173.312(b)(1) prescribes the filling requirements for multiple element gas containers (MEGCs). In this NPRM, we propose requirements for filling pressure receptacles containing liquefied compressed gas by weight.

Section 178.35

Section 178.35(f) prescribes the marking requirements that apply to DOT-specification cylinders. In this NPRM, we propose to add new paragraph (f)(7) to § 178.35 to require that cylinder tare weight or mass weight, and water capacity, be marked on certain DOT-specification cylinders filled by weight.

Sections 178.36, 178.37, 178.38, 178.39, 178.42, 178.44, 178.45, 178.46, 178.47, 178.50, 178.51, 178.53, 178.55 178.56, 178.57, 178.58, 178.59, 178.60, 178.61, 178.65, and 178.68

These sections prescribe the DOT-specification requirements for a cylinder type including the performance standards for pressure testing of the cylinder. In this NPRM, we propose to require that testing and equipment used to conduct the pressure testing be in conformance with CGA C–1, *Methods for Pressure Testing Compressed Gas Cylinders,* to provide for consistency and clarity in performance of pressure testing. We also propose to revise the format of the pressure testing paragraphs for greater consistency.

Sections 178.50, 178.51, 178.61, and 178.68

These sections prescribe DOT 4-series specification requirements. These specifications are often unclear to manufacturers and enforcement personnel. In this NPRM, we propose to revise the specification requirements to promote consistent and uniform manufacturing practices for DOT 4-series cylinders.

Section 178.70

Section 178.70(d) prescribes the requirements to obtain design approval of a UN pressure receptacle. In this NPRM, we propose to revise paragraph (d) to include language that an approval for a design modification is not required if the specific design modification is covered under the UN/ISO standard for the design type already approved.

Section 180.203

Section 180.203 prescribes definitions that apply to the qualification, maintenance, and use of cylinders under the HMR. In this NPRM, we propose to add new definitions for the terms or phrases "accuracy," "accuracy grade," "actual test pressure," "calibrated cylinder," "error," "master gauge," "mobile unit," "overpressurized," "percent permanent expansion," "precision," "proof pressure test," "reference gauge," and "service pressure"; and revise the definitions for "commercially free of corrosive components," "defect," and "test pressure." These proposed definitions will clarify the cylinder requirements prescribed in 49 CFR part 180, subpart C.

Section 180.205

Section 180.205 prescribes the general requirements for requalifying DOT-specification cylinders. In this NPRM, we propose to revise and add new regulatory text for clarity. Specifically, we propose to clarify the conditions requiring test and inspection of cylinders under paragraph (d) by including a reference to evidence of grinding; revise the paragraph (f) visual inspection requirements to include reference to shot blasting and "chasing" of cylinders; clarify and revise the paragraph (g) retest equipment tolerances for consistency with ISO standards 6406 and 10461 (*i.e.*, standards for periodic inspection and testing of gas cylinders) which are both incorporated by reference in the HMR in § 180.207 to allow for broader use of retest equipment (we invite comment on this course of action relative to the tolerances provided for in CGA C–1); revise the paragraph (i) cylinder condemnation requirements to clarify the responsibilities of the requalifier and add conditions under which a cylinder must be condemned; and include a reference to training materials, under new paragraph (j), that are suitable for training persons who requalify cylinders using the volumetric expansion test method.

Section 180.207

Section 180.207 prescribes requirements for requalifying UN pressure receptacles. In this NPRM, we propose to revise and add new regulatory text for clarity. Specifically, we propose to clarify the language prohibiting the use of a UN pressure receptacle beyond its service life by, for example, removing approval authorization language; to revise the requalification procedures for seamless steel cylinders to include MEGC pressure receptacles larger than 150 liters water capacity; and to revise the requalification schedule for dissolved acetylene UN cylinders to be requalified no sooner than five years and no later than ten years from the date of manufacture.

Section 180.209

Section 180.209 prescribes requirements for requalifying specification cylinders. In this NPRM, we propose to revise and add new regulatory text for clarity; and to incorporate the current version of CGA C–1, *Methods for Pressure Testing Compressed Gas Cylinders*. Specifically, we propose to revise the paragraph (a) table 1 to include reference to the paragraph (e) conditions for an alternate requalification period; the paragraph (b) conditions for star-marking of a DOT 3A or 3AA cylinder; and the paragraph (m) requalification conditions for DOT 3AL cylinders made of 6351–T6 aluminum alloy.

Section 180.211

Section 180.211 prescribes requirements to repair, rebuild, and reheat treat DOT–4 series specification cylinders. In this NPRM, we propose to clarify that the requirements to repair DOT 4L cylinders in paragraph (c) of this section are for rebuilding the cylinders and to clarify paragraph (e) for when a hydrostatic test may be performed on the inner containment vessel of a DOT 4L welded insulated cylinder. We do not propose in this NPRM to add a definition for "recondition" to § 180.203 because of our concern that adding this definition for only DOT 4L cylinders might cause further confusion and reduce safety.

Section 180.212

Section 180.212(a) prescribes requirements to repair seamless DOT 3-series specification cylinders and seamless UN pressure receptacles. In this NPRM, we propose to require an ultrasonic examination on DOT 3-series cylinders and seamless UN pressure receptacles after any grinding is performed on these cylinders.

Section 180.213

Section 180.213 prescribes requirements for marking DOT-specification cylinders and UN pressure receptacles that are successfully requalified. In this NPRM, we propose to revise the requalification marking method to clarify the steps involved and that stamping the sidewall of the cylinder is prohibited. Additionally, we propose to clarify the marking requirements for foreign cylinders filled for export under paragraph (d) and to include two new marking requirements under paragraph (f) for designation of grinding with ultrasonic wall thickness examination and for designation of requalification of a foreign cylinder requalified in conformance with §§ 171.23(a)(4) and 180.209(l) of this subchapter. Finally, we propose to add visual inspection identifier number marking requirements under a new paragraph (g).

Section 180.215

Section 180.215 prescribes reporting and retention requirements for a person who requalifies, repairs, or rebuilds cylinders. In this NPRM, we propose to clarify what information these documents must contain.

49 CFR Part 180, Appendix C

Part 180, appendix C prescribes the requirements eddy current examination equipment must meet to inspect DOT 3AL, 6351–T6 aluminum alloy cylinders. In this NPRM, we propose to retitle the appendix and revise paragraph 1 for clarity regarding equipment calibration procedures when conducting eddy current examination.

VII. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This NPRM

Federal Hazardous Materials Transportation Law (49 U.S.C. 5101–5128) authorizes the Secretary of Transportation to "prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce." Section 5117(a) authorizes the Secretary to issue a special permit exempting compliance with a regulation prescribed in §§ 5103(b), 5104, 5110, or 5112 "to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under [the Federal hazmat law], or consistent with the public interest . . . if a required safety level does not exist." The issues described in this NPRM respond to 20 outstanding petitions for rulemaking.

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This NPRM is not considered a significant regulatory action under section 3(f) of Executive Order 12866 ("Regulatory Planning and Review") and was not reviewed by the Office of Management and Budget (OMB).

Neither was it considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034].

Executive Order 13563 ("Improving Regulation and Regulatory Review") is "supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 of September 30, 1993." In addition, Executive Order 13563 specifically requires agencies to: (1) Involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) "identify and consider regulatory approaches that reduce burdens and maintain flexibility"; (4) ensure the objectivity of any scientific or technological information used to support regulatory action; and (5) consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome.

PHMSA has involved the public in the regulatory process by (1) addressing issues identified for possible future rulemaking in letters of interpretation and other correspondence, and (2) responding to 20 petitions for rulemaking submitted by stakeholders in the compressed gas industry in conformance with 49 CFR 106.95. Overall, the issues discussed in this NPRM promote the continued safe transportation of hazardous materials while producing a net benefit.

These petitions clarify the existing regulatory text in the HMR, incorporate widely used industry publications, and address specific safety concerns, thus enhancing the safe transportation of compressed gases while limiting the impact on the regulated community. Incorporating the provisions of special permits into regulations with general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing burdens and costs and increasing productivity.

Further, PHMSA on its own initiative is clarifying existing regulatory language to reduce misunderstandings that will thereby improve safety. Some of the proposed changes are summarized below, by topic.

Incorporating Updated CGA C–6, Visual Inspection of Steel Cylinders

PHMSA proposes to replace the currently incorporated Seventh Edition of the CGA publication C–6, *Standards for Visual Inspection of Steel Compressed Gas Cylinders* with the revised Eleventh Edition and update the appropriate references throughout the HMR.

Under the HMR, compressed gas cylinders must be visually inspected as part of the requalification process once every five years. CGA C–6 serves as a guide to cylinder requalifiers and users for establishing cylinder inspection procedures and standards. The Tenth Edition provides updated and enhanced guidance on the inspection of multi-element gas containers, cylinder thread inspection for cylinders used in corrosive gas service, and clarified maximum allowable depths and measuring techniques for various types of corrosion.

PHMSA identified approximately 5,000 companies that would be subject to this standard. The majority of these companies are classified as small businesses using SBA size standards. This revision would impose a one-time individual cost for purchase of the updated standard. We assume that the majority of companies subject to this standard are non-CGA members or non-CGA subscribers. Assuming approximately 5,000 companies purchase the Eleventh Edition of CGA–6, we estimate the upper bound of the total cost across all affected entities for this proposal would be approximately $710,000.

The benefit of this change is that it would improve the clarity of industry standards that are currently incorporated by reference. It facilitates voluntary compliance and reduces the burdens associated with references to outdated material. PHMSA believes that these changes may yield an incremental improvement to the overall safety of hazmat cylinder transportation. In comments made to the ANPRM, five stakeholders support the proposal to update the IBR of CGA C–6 to the Tenth Edition. No commenters objected to the proposal or provided benefit data.

Incorporating CGA C–1 Methods of Pressure Testing Compressed Gas Cylinders Into the HMR

PHMSA proposes to revise the HMR regarding the retesting of cylinders using pressure testing. The HMR is often perceived as unclear on procedures and requirements for pressure testing of cylinders. Incorporating by reference CGA C–1, *Methods for Pressure Testing Compressed Gas Cylinders* clarifies ambiguities in the HMR.

It is estimated that this would affect approximately 980 entities that conduct pressure testing, including cylinder requalifiers, retesters, and manufacturers. PHMSA estimates a one-time compliance cost of $186 for each entity purchasing the Eleventh Edition of CGA C–1. The upper bound of the total cost across all affected entities for this proposal would be approximately $182,280. Actual costs are expected to be lower, as some of the 980 entities may be members, subscribers, or already own the revised edition. Revising the HMR to incorporate CGA C–1 would increase clarity, reduce confusion, provide enhanced guidance, and provide marginal safety benefits without imposing requirements that are potentially costly or difficult.

Weight Marking Requirements for Filling of DOT 4-Series Specification Cylinders

PHMSA proposes to require newly manufactured DOT 4B, 4BA, 4BW, and 4E cylinders to be marked with the tare weight or the mass weight and the water capacity. Accurate cylinder tare weight, or mass weight, and water capacity are crucial for safe filling and transportation of cylinders containing liquefied compressed gas. Overfilled cylinders have the potential for leakage and possible failure during transport.

PHMSA identified six U.S. based manufacturers of the cylinders. Five of these companies are classed as small businesses using SBA size standards. The HMR already incorporate by reference NFPA 58, LP Gas Code, which requires cylinders used for liquefied petroleum gases to be marked with the tare weight and water capacity. The NFPA 58 does not specify how the cylinders must be marked, nor does it specify by whom. Further, NFPA 58 only addresses liquefied petroleum gas, not all liquefied compressed gases. We do not anticipate significant additional costs to DOT 4-series-specification cylinders, manufacturers, or owners, because many in the liquefied compressed gas industry already request that manufacturers mark cylinders with this additional information as an added safety measure.

Clarify Filling Limits on Multiple Element Gas Containers

PHMSA proposes to clarify filling limits for a liquefied compressed gas in a manifold comprised of DOT-specification cylinders or a multiple element gas container (MEGC). Specifically, liquefied compressed gases contained in manifold cylinders cannot exceed the filling densities specified in § 173.304a(a)(2) and liquefied gases in MEGCs comprised of UN pressure receptacles must not exceed the values contained in P200 as specified in § 173.304b.

This proposed change will remove the discrepancy between the set pressure specified in CGA S–1.1 and the differing set pressures prescribed in §§ 173.302(f)(2) and 173.304(f)(2). This revision would not impose any new costs on affected industries, and although the proposed revision restates a requirement from another section in the HMR, we believe it would provide additional protection against overfilling of a cylinder. This change would promote regulatory compliance and foster safe filling practices.

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism") and the President's memorandum ("Preemption") that was published in the **Federal Register** on May 22, 2009 [74 FR 24693]. This proposed rule will preempt State, local, and Native America tribal requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101–5128, contains an express preemption provision [49 U.S.C. 5125 (b)] that preempts State, local, and Native American tribal requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

PHMSA invites those with an interest in the issues presented in this NPRM to comment on the effect the adoption of specific proposals may have on State or local governments.

D. Executive Order 13175

This NPRM was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this NPRM does not have tribal implications and does not impose substantial direct compliance costs on Native American tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required. We invite Native American tribal governments to provide comments on the effect the adoption of specific proposals may have on Indian communities.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. (*See* 5 U.S.C. 601.) This notice has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's Policies and Procedures to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered. Section 603(b) of the Regulatory Flexibility Act requires an analysis of the possible impact of the proposed rule on small entities, including the need for the rule, the description of the action, the identification of potentially affected small entities, the reporting and recordkeeping requirements, the related Federal rules and regulations, and the alternative proposals considered. Such analysis for this NPRM is as follows:

1. Need for the NPRM

Current requirements for the manufacture, use, and requalification of cylinders can be traced to standards first applied in the early 1900s. Over the years, the regulations have been revised to reflect advancements in transportation efficiency and changes in the national and international economic environment. This NPRM is part of a retrospective analysis to modify and streamline existing requirements that are outmoded, ineffective, insufficient, or excessively burdensome. This rulemaking also introduces new provisions suggested or developed by industry representatives, industry groups that develop standards, or international regulatory bodies.

2. Description of Action

This NPRM considers incorporating the provisions of one special permit, responds to 20 petitions for rulemaking, considers clarifying other requirements in the HMR, and addresses areas of concern that are currently left out of the HMR. The amendments discussed in this NPRM are designed to increase flexibility for the regulated community, promote technological advancement, and facilitate international transportation while maintaining a comparable level of safety.

3. Identification of Potentially Affected Small Entities

The amendments considered here are likely to affect cylinder manufacturers (NAICS code 332420; approximately 568 companies); cylinder requalifiers; independent inspection agencies; commercial establishments that own and use DOT-specification cylinders and UN pressure receptacles; and individuals who export non-UN/ISO compressed gas cylinders (NAICS codes 32512, 336992, 423450, 423850, 423990, 454312, 541380). Nearly all of these companies, particularly cylinder requalification facilities of which there are approximately 5,000, are small entities based on the criteria developed by the Small Business Administration.

4. Reporting and Recordkeeping Requirements

This NPRM does not include any new reporting or recordkeeping requirements.

5. Related Federal Rules and Regulations

The Occupational Safety and Health Administration (OSHA) prescribes requirements for the use, maintenance, and testing of portable fire extinguishers in 29 CFR 1910.157 and requirements for fixed fire suppression systems in 29 CFR 1910.160. The issues discussed in this NPRM pertaining to the transportation of fire extinguishers and compressed gas cylinders that are a component of a fixed fire suppression system do not conflict with the requirements in 29 CFR. With respect to the transportation of compressed gases in cylinders, there are not related rules or regulations issued by other departments or agencies of the Federal government.

6. Alternative Proposals for Small Business

Certain regulatory actions may affect the competitive situation of an individual company or group of companies by imposing relatively greater burdens on small, rather than large, enterprises. PHMSA requests comments from small entities on the impacts of these additional requirements.

7. Conclusion

This NPRM requests information that will be used to develop a proposal to amend provisions of the HMR addressing the manufacture, maintenance, and use of cylinders. PHMSA anticipates that the proposals in this NPRM will reduce burdens for most persons and any costs resulting from adoption of new requirements will be offset by the benefits derived from eliminating the need to apply for special permits, increasing regulatory flexibility, and improving safety through enhanced compliance. If your business or organization is a small entity and the adoption of the proposals contained in this NPRM could have a significant economic impact on your operations, please submit a comment explaining how and to what extent your business or organization could be affected.

F. Paperwork Reduction Act

This NPRM does not impose new information collection requirements. Depending on the results of our request for comments to this NPRM, there may be a decrease in the annual burden and costs under OMB-proposed changes to incorporate provisions contained in certain widely used or longstanding special permits with an established safety record.

PHMSA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this NPRM.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this NPRM. We must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this NPRM.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This NPRM does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector and is the least burdensome alternative that achieves the objective of the rule. Further, in compliance with the Unfunded Mandates Reform Act of 1995, PHMSA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), and implementing regulations by the Council on Environmental Quality (CEQ) (40 CFR part 1500) require Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions that significantly affect the quality of the human environment. The CEQ regulations require Federal agencies to conduct an environmental review considering: (1) The need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process.

1. Need for the Action

This NPRM responds to 20 petitions for rulemaking submitted by the regulated community and seeks comment on incorporating the provisions of one special permit. The issues discussed in this NPRM would, if eventually adopted, update and expand the use of currently authorized industry consensus standards; revise the construction, marking, and testing requirements of DOT 4-series cylinders; clarify the filling requirements for cylinders; discuss the handling of cylinders used in fire suppression systems; and revise the requalification and condemnation requirements for cylinders.

This NPRM discusses the following amendments to the HMR:

- Replace the currently incorporated Seventh Edition of the CGA's publication *C–6 Standards for Visual Inspection of Steel Compressed Gas Cylinders* with the revised Tenth Edition and update the appropriate references throughout the HMR.
- Revise the manufacturing requirements for certain DOT–4 series cylinders.
- Revise the requirements for the requalification of DOT-specification cylinders by pressure testing found in 49 CFR part 180, subpart C.
- Allow the use of the labels described in the Eighth Edition of CGA's publication C–7 *Guide to the Preparation of Precautionary Labeling and Marking of Compressed Gas Containers* (currently IBR in the HMR) appendix A on cylinders contained in overpacks.
- Require manufacturers to mark newly manufactured cylinders suitable for the transport of liquefied compressed gas with the mass weight or tare weight, and water capacity.
- Allow non-specification cylinders used in a fixed fire suppression system to be transported under the same exceptions as those provided for fire extinguishers.
- Permit use of the OVERPACK marking for cylinders packed in conformance with § 173.301(a)(9).
- Clarify filling limits for a liquefied compressed gas in a manifold or a multiple element gas container (MEGC).
- Clarify the requirements for filling non-specification cylinders for export or use on board a vessel.
- Add requirements for DOT-specification cylinders used to transport adsorbed gases.

2. Alternatives Considered

Alternative (1): Do nothing. Our goal is to update, clarify, and provide relief from certain existing regulatory requirements to promote safer transportation practices, eliminate unnecessary regulatory requirements, and facilitate international commerce. We rejected the do-nothing alternative.

Alternative (2): Preferred choice. With this alternative, PHMSA will publish an NPRM seeking public comment on the issues raised in 20 petitions for rulemaking and the incorporation of one special permit; review the comments received on the amendments described in the ANPRM and their potential economic and safety implications; and use these comments to craft more specific proposals that are published in this NPRM. This is the selected alternative.

3. Environmental Impacts

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The hazardous materials regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups. The process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate a material's hazards through the use of hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard material (Packing Group I) to a low hazard material (Packing Group III). The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Under the HMR, hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause the loss of ecological resources (*e.g.,* wildlife habitats) and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. Compliance with the HMR substantially reduces the possibility of accidental release of hazardous materials.

It is anticipated that the petitions and special permits discussed in this NPRM if adopted in a future rulemaking, would have minimal, if any, environmental consequences.

4. Agencies Consulted

Occupational Safety and Health Administration
National Institute of Standards and Technology
U.S. Environmental Protection Agency

5. Conclusion

PHMSA has conducted a technical review of the amendments discussed in this NPRM and determined that the amendments considered would provide protection against the release of hazardous materials based on sound scientific methods and would not result in unusual stresses on the cylinder or adversely impact human health or the environment. PHMSA welcomes any data or information related to environmental impacts, both positive and negative, that may result from a future rulemaking addressing the issues discussed in this NPRM.

J. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

K. International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as the protection of safety, and do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. PHMSA notes the purpose is to ensure the safety of the American public and has assessed the effects of this NPRM to ensure that it does not exclude imports that meet this objective. As a result, this NPRM is not considered as creating an unnecessary obstacle to foreign commerce.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA is proposing to amend 49 CFR Chapter I as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121, sections 212–213; Pub. L. 104–134, section 31001; Pub. L. 112–141 section 33006; 49 CFR 1.81 and 1.97.

■ 2. In § 107.803, revise paragraph (c)(3) to read as follows:

§ 107.803 Approval of an independent inspection agency (IIA).

* * * * *

(c) * * *

(3) Detailed description of the applicant's qualifications and ability to perform the inspections and to verify the inspections required by part 178 and part 180 of this chapter; or those required under the terms of a special permit issued under this part.

* * * * *

■ 3. In § 107.805, revise paragraphs (c)(3) and (c)(4), and add paragraph (c)(5) to read as follows:

§ 107.805 Approval of cylinder and pressure receptacle requalifiers.

* * * * *

(c) * * *

(3) A certification that the facility will operate in compliance with the applicable requirements of subchapter C of this chapter;

(4) The signature of the person making the certification and the date on which it was signed; and

(5) For a mobile unit operation (as defined in § 180.203 of subchapter C of this chapter), the type of equipment to be used, the specific vehicles to be used, the geographic area the applicant is requesting to operate within, and any differences between the mobile operation and the facility operation as described under paragraph (c)(2) of this section.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 4. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121, sections 212–213; Pub. L. 104–134, section 31001; 49 CFR 1.81 and 1.97.

■ 5. In § 171.7, revise paragraphs (g)(1) and (n) to read as follows:

§ 171.7 Reference material.

* * * * *

(g) * * *

(1) 2015 ASME Boiler and Pressure Vessel Code (ASME Code), 2015 Edition, July 1, 2015 (as follows), into §§ 172.102; 173.3; 173.5b; 173.24b; 173.302d; 173.306; 173.315; 173.318; 173.420; 178.255–1; 178.255–2; 178.255–14; 178.255–15; 178.273; 178.274; 178.276; 178.277; 178.320; 178.337–1; 178.337–2; 178.337–3; 178.337–4; 178.337–6; 178.337–16; 178.337–18; 178.338–1; 178.338–2; 178.338–3; 178.338–4; 178.338–5; 178.338–6; 178.338–13; 178.338–16; 178.338–18; 178.338–19; 178.345–1; 178.345–2; 178.345–3; 178.345–4; 178.345–7; 178.345–14; 178.345–15; 178.346–1; 178.347–1; 178.348–1; 179.400–3; 180.407.

* * * * *

(n) Compressed Gas Association (CGA), 1235 Jefferson Davis Highway, Arlington, VA 22202.

(1) CGA C–1, Methods for Pressure Testing Compressed Gas Cylinders, 2016, into §§ 178.36, 178.37, 178.38, 178.39, 178.42, 178.44, 178.45, 178.46, 178.47; 178.50; 178.51; 178.53; 178.55; 178.56; 178.57; 178.58; 178.59; 178.60; 178.61; 178.65; 178.68; 180.205, 180.209.

(2) CGA C–3, Standards for Welding on Thin-Walled Steel Cylinders, 2005 (Reaffirmed 2011), into §§ 178.47; 178.50; 178.51; 178.53; 178.55; 178.56; 178.57; 178.58; 178.59; 178.60; 178.61; 178.65; 178.68; 180.211.

(3) CGA C–5, Cylinder Service Life—Seamless Steel High Pressure Cylinders, 1991 (Reaffirmed 1995), into § 173.302a and 180.209.

(4) CGA C–6, Standards for Visual Inspection of Steel Compressed Gas Cylinders, 2013, into §§ 172.102, 173.3, 173.198, 173.302d, 180.205, 180.209, 180.211, 180.411, 180.519.

(5) CGA C–6.1, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, 2002, into §§ 180.205; 180.209.

(6) CGA C–6.2, Guidelines for Visual Inspection and Requalification of Fiber Reinforced High Pressure Cylinders, 1996, into § 180.205.

(7) CGA C–6.3, Guidelines for Visual Inspection and Requalification of Low Pressure Aluminum Compressed Gas Cylinders, 1991, into §§ 180.205; 180.209.

(8) CGA C–7, Guide to Preparation of Precautionary Labeling and Marking of Compressed Gas Containers, Appendix A, issued 2004, into § 172.400a.

(9) CGA C–8, Standard for Requalification of DOT–3HT Cylinder Design, 1985, into §§ 180.205; 180.209.

(10) CGA C–11, Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture, 2001, into § 178.35.

(11) CGA C–12, Qualification Procedure for Acetylene Cylinder Design, 1994, into §§ 173.301; 173.303; 178.59; 178.60.

(12) CGA C–13, Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders, 2000, into §§ 173.303; 180.205; 180.209.

(13) CGA C–14, Procedures for Fire Testing of DOT Cylinder Pressure Relief Device Systems, 2005 (Reaffirmed 2010), into §§ 173.301; 173.323.

(14) CGA G–1.6, Standard for Mobile Acetylene Trailer Systems, 2011, in § 173.301(g).

(15) CGA G–2.2, Guideline Method for Determining Minimum of 0.2% Water in Anhydrous Ammonia, 1985, Reaffirmed 1997, into § 173.315.

(16) CGA G–4.1, Cleaning Equipment for Oxygen Service, 1985, into § 178.338–15.

(17) CGA P–20, Standard for the Classification of Toxic Gas Mixtures, 2003, Third Edition, into § 173.115.

(18) CGA S–1.1, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, (except paragraph 9.1.1), 2011, into §§ 173.301; 173.304a; 178.75.

(19) CGA S–1.2, Safety Relief Device Standards Part 2—Cargo and Portable Tanks for Compressed Gases, 1980, into §§ 173.315; 173.318; 178.276; 178.277.

(20) CGA S–7, Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders, 2005, into § 173.301.

(21) CGA TB–2, Guidelines for Inspection and Repair of MC–330 and MC–331 Cargo Tanks, 1980, into §§ 180.407; 180.413.

(22) CGA TB–25, Design Considerations for Tube Trailers, 2008, into § 173.301.

* * * * *

■ 6. In § 171.23, revise paragraph (a)(4)(i) to read as follows:

§ 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations.

* * * * *

(a) * * *

(4) * * *

(i) The cylinder has been requalified and marked in accordance with subpart C of part 180 of this subchapter, or has been requalified as authorized by the Associate Administrator;

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 7. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 8. In § 172.400a, revise paragraph (a)(1) to read as follows:

§ 172.400a Exceptions from labeling.

* * * * *

(a) * * *

(1) A Dewar flask meeting the requirements in § 173.320 of this subchapter, or a cylinder containing a Division 2.1, 2.2, or 2.3 material, that is durably and legibly marked in conformance with CGA C–7, appendix A (IBR; *see* § 171.7 of this subchapter). However, if overpacked, marking (or appropriate labels) must be communicated on the exterior of the overpack unless visible from the outside in accordance with § 173.25 of this subchapter.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 9. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 10. In § 173.3, revise paragraph (d)(1) to read as follows:

§ 173.3 Packaging and exceptions.

* * * * *

(d) * * *

(1) Except for Class 1, Class 7, or acetylene material, a cylinder containing a hazardous material may be overpacked in a salvage cylinder.

* * * * *

■ 11. In § 173.301:

■ a. Revise paragraphs (a)(9) and (f)(4); and

■ b. In paragraphs (c) and (f), replace “9.1.1.1” with “9.1.1” in each place it appears.

The revision reads as follows:

§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical pressure vessels.

(a) * * *

(9) Specification 2P, 2Q, 3E, 3HT, spherical 4BA, 4D, 4DA, 4DS, and 39 cylinders must be packed in strong non-bulk outer packagings. The outside of the combination package must be marked with an indication that the inner packagings conform to the prescribed specifications. Except for Specification 2P and 2Q containers, the “OVERPACK” marking in accordance with § 173.25(a)(3) of this part may be used to satisfy the marking requirement of this paragraph. Display of the “OVERPACK” marking is not an indication that this combination package is an overpack.

* * * * *

(f) * * *

(4) *DOT 39 cylinders.* (i) A pressure relief device is required on a DOT 39 cylinder regardless of cylinder size or filled pressure.

(ii) A DOT 39 cylinder used for liquefied Division 2.1 materials must be equipped with a metal pressure relief device.

(iii) Fusible pressure relief devices are not authorized on a DOT 39 cylinder containing a liquefied gas.

(iv) Notwithstanding the requirements of paragraph (f)(1) of this section with respect to the minimum burst pressure of pressure relief devices, a pressure relief device on a DOT 39 cylinder used to transport compressed or liquefied oxidizing gases may have a minimum burst pressure within the range prescribed in §§ 173.302(f)(2) or 173.304(f)(2), as appropriate.”

* * * * *

■ 12. In § 173.302, revise paragraph (a)(2) to read as follows:

§ 173.302 Filling of cylinders with nonliquefied (permanent) compressed gases or adsorbed gases.

(a) * * *

(2) *Adsorbed gas.* A cylinder filled with an adsorbed gas must be offered for transportation in conformance with the requirements of paragraph (d) of this section and § 173.301 of this subpart. In addition, UN pressure receptacles must meet the requirements in §§ 173.301b, 173.302b, and 173.302c of this subpart, as applicable, and DOT-specification cylinders must meet the requirements of §§ 173.301a, 173.302a and 173.302d, as applicable, of this subpart. Where more than one section applies to a cylinder, the most restrictive requirements must be followed.

* * * * *

■ 13. In § 173.302a, revise paragraph (a)(3) to read as follows:

§ 173.302a Additional requirements for shipment of nonliquefied (permanent) compressed gases in specification cylinders.

(a) * * *

(3) *DOT 39 cylinders.* When the cylinder is filled with a Division 2.1 flammable gas, the internal volume of the cylinder may not exceed 1.25 L (75 in^3). For chemical under pressure (see § 172.102, special provision 362 of this subchapter), the internal volume may not exceed 50 L (3050 in^3).

* * * * *

■ 14. Add § 173.302d to read as follows:

§ 173.302d Additional requirements for the shipment of adsorbed gases in DOT-specification cylinders.

(a) *General.* A cylinder filled with an adsorbed gas must be offered for transportation in DOT-specification cylinders subject to the requirements in this section, and §§ 173.301 and 173.302 of this subpart.

(b) *Packaging.* (1) DOT–3E1800, DOT–3AA2015, and DOT–3AA2265 cylinders must be used with a capacity between 0.4 and 7.3 liters.

(2) Each cylinder authorized by this section must remain in dedicated product service for its entire life.

(3) The maximum pressure inside each cylinder must be 0 psig at 70 °F and 30 psig at 140 °F.

(4) The contents of the cylinders must be limited in pressure and volume so that if totally discharged into the overpack cylinder, the pressure in the overpack cylinder will not exceed 5/4 of the MAWP at 55 °C (131 °F).

(5) The valve wheel of each cylinder must be secured by a strap that provides tension in the tightening direction. A plug must be placed in each valve and the cylinder and valve area must be shrink-wrapped before being placed in the overpack cylinder. A protective valve cap must be used on all pressure vessels except the DOT–3E1800 cylinder. Valves on the DOT–3E1800 cylinders must be protected in conformance with § 173.40(d) of this part.

(6) Prior to each shipment, the leak integrity of the overpack cylinder must be verified and have a leak rate no greater than 1×10^{-4} standard atmospheric cubic centimeters per second.

(7) All closures of the overpack cylinder shall have a method to determine if they have been tampered with during transportation. The pressure indicating device on the overpack cylinder may be used to indicate tampering.

(8) The shipper must instruct the carriers to reject or remove the overpack cylinder from transportation in the event that the pressure gauge drops below a pressure designated by the shipper.

(9) Each overpack cylinder must be labeled for the hazardous material it contains.

(10) *Adsorbent material.* Each cylinder is filled with a monolith solid microporous sorbent and/or bead-type sorbent onto which the gas is adsorbed. The gas remains adsorbed during transportation in essentially a solid state. The system is filled, operated, and transported at sub-atmospheric pressures and is described as a sub-atmospheric gas delivery system (SDS). The gas must be removed from the SDS using the input of external energy, such as a steady vacuum.

(11) *Overpack.* (i) Cylinders authorized under this section must be transported in a non-DOT-specification full-opening, hinged-head or fully removable head, steel overpack cylinder. The overpack cylinder must be constructed to Section VIII, Division 1 of the ASME Code (IBR; *see* § 171.7 of this subchapter) with a minimum design margin of 4 to 1. The minimum MAWP must be 75 psig. The maximum water capacity must be 450 L (119 gallons). The overpack cylinder must not be equipped with a pressure relief device. The cylinders must be securely positioned within the overpack to prevent excessive movement. The overpack cylinder must have gaskets, valves and fittings that are compatible

with the hazardous materials they contain. The overpack cylinder must have a pressure gauge clearly visible from the outside. The pressure gauge must be recessed into the overpack cylinder or otherwise protected from damage during transportation. The overpack cylinder must be pressurized to 3–5 psig with inert gas.

(ii) *Overpack testing.* Each overpack cylinder must be visually inspected in conformance with CGA C–6 (IBR; *see* § 171.7 of this subchapter) at least once every five years. In addition, each overpack must be pressure tested to a minimum test pressure of at least 1.5 times MAWP. The pressure must be maintained for at least 30 seconds. The cylinder must be examined under test pressure and removed from service if a leak or defect is found. The retest and inspection must be performed by a person trained and experienced in the use of the inspection and testing equipment.

(iii) *Overpack marking.* Each overpack cylinder that is successfully requalified must be durably and legibly marked with the word "Tested" followed by the requalification date (month/year). The marking must be in letters and numbers at least 12 mm (0.5 inches) high. Stamping on the overpack sidewall is not permitted. The requalification marking may be placed on any portion of the upper end of the cylinder near the marking required by the following method, or on a metal plate permanently secured to the cylinder. The outside of each overpack cylinder must be plainly and durably marked on any portion of the upper end with "OVERPACK CYLINDER" (in lieu of the "OVERPACK" marking requirement of § 173.25(a)(4) of this part), the proper shipping name of the hazardous material contained inside the overpack, the name and address of the consignee or consignor, and the name and address or registered symbol of the overpack manufacturer.

(iv) *Recordkeeping.* The person who tested the overpack or that person's agent must retain a record of the most recent visual inspection and pressure test of the overpack until the cylinder is requalified. The records must be made available to a DOT representative upon request.

(12) *Sub-atmospheric gas delivery system (SDS) testing.* Each cylinder, except DOT–3E cylinders, must be retested by persons trained to perform this procedure. DOT–3AA cylinders must be retested and marked in conformance with the requirements for DOT–3AA cylinders in 49 CFR part 180 or the requirements of a current DOT special permit for ultrasonic examination.

(c) *Gases.* The gases permitted to be transported as adsorbed in DOT-specification cylinders in conformance with this section are:

Proper shipping name/hazardous materials description	Hazard class/division	Identification No.	Hazard zone
Arsine	2.3	UN 2188	Zone A.
Boron Trifluoride	2.3	UN 1008	Zone B.
Hydrogen Selenide, Anhydrous	2.3	UN 2202	Zone A.
Liquefied Gas, Toxic, Corrosive, n.o.s. (Arsenic Pentafluoride)	2.3	UN 3308.	
Liquefied Gas, Toxic, Corrosive, n.o.s. (Germanium Tetrafluoride)	2.3	UN 3308	Zone B.
Liquefied Gas, Toxic, Corrosive, n.o.s. (Phosphorus Trifluoride)	2.3	UN 3308.	
Phosphine	2.3	UN 2199	Zone A.
Silicon Tetrafluoride	2.3	UN 1859	Zone B.

■ 15. In § 173.304a, add paragraph (a)(3) to read as follows:

§ 173.304a Additional requirements for shipment of liquefied compressed gases in specification cylinders.

(a) * * *

(3) The internal volume of a DOT 39 cylinder may not exceed 1.23 liters (nominal 75 in^3) for a liquefied flammable gas. This cylinder shall be equipped with a pressure relief device as defined by the commodity in CGA S–1.1 (IBR; *see* § 171.7 of this subchapter). If the commodity is not listed in CGA S–1.1, a CG–7 pressure relief valve must be used.

* * * * *

■ 16. In § 173.306, revise paragraph (g) to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(g) *Water pump system tank.* A water pump system tank charged with compressed air or limited quantities of nitrogen or helium to not over 40 psig for single trip shipment to an installation site is excepted from labeling, and the specification packaging requirements of this subchapter when shipped under the following conditions. In addition, shipments of these tanks are not subject to subpart F (placarding) requirements of part 172 of this subchapter, and not subject to parts 174 (except § 174.24) and 177 (except § 177.817) of this subchapter.

(1) The tank must be of steel or composite, with heads concave to pressure, having a rated water capacity not exceeding 120 gallons and with an outside diameter not exceeding 24 inches. Safety relief devices are not required.

(2) The tank must be pneumatically tested to the manufacturer's specified maximum working pressure. The test pressure must be permanently marked on the tank.

(3) The stress at prescribed pressure for steel tanks must not exceed 20,000 psi (or 25,000 psi for deep-draw steel), concave dome tanks using the formula:

$$S = Pd/2t$$

Where:

S = wall stress in psi:
P = prescribed pressure for the tank of at least three (3) times charged pressure at 70 °F or 100 psig, whichever is greater;
d = inside diameter in inches;
t = minimum wall thickness, in inches.

(4) For composite tanks, the minimum value of a hydrostatic leak test, per design, must be at least six (6) times the charge pressure at 70 °F or three (3) times the manufacturer's specified maximum working pressure, whichever is greater.

(5) For steel and composite tanks, the burst pressure must be at least six (6) times the charge pressure at 70 °F or three (3) times the manufacturer's specified maximum working pressure, whichever is greater.

(6) Each tank must be over-packed in a strong outer packaging in conformance with § 173.301(h) of this part.

(7) Transportation is limited to motor vehicle, railcar, and vessel. Transportation by aircraft is not authorized.

* * * * *

■ 17. In § 173.309, revise the introductory text to read as follows:

§ 173.309 Fire extinguishers.

This section applies to portable fire extinguishers for manual handling and operation, fire extinguishers for installation in aircraft, fire extinguishers for installation as part of a fire suppression system, and large fire extinguishers. Large fire extinguishers include fire extinguishers mounted on wheels for manual handling; fire extinguishing equipment or machinery mounted on wheels or wheeled platforms or units transported similar to (small) trailers; and fire extinguishers composed of a non-rollable pressure drum and equipment, and handled, for example, by forklift or crane when loaded or unloaded.

* * * * *

■ 18. In § 173.312, revise paragraph (b)(1) to read as follows:

§ 173.312 Requirements for shipment of MEGCs.

* * * * *

(b) * * *

(1) An MEGC being filled with a liquefied compressed gas must have each cylinder filled separately by weight. Manifolding during filling is not authorized. The filling density for DOT-specification cylinders may not exceed the values contained in § 173.304a(a)(2) of this subpart and for UN pressure receptacles may not exceed the values in accordance with § 173.304b(b) of this subpart.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 19. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 20. In § 178.35, add paragraph (f)(7) to read as follows:

§ 178.35 General requirements for specification cylinders.

* * * * *

(f) * * *

(7) *Tare weight or mass weight, and water capacity marking.* DOT-specification 4B, 4BA, 4BW, and 4E cylinders manufactured after January 1, 2017, must be marked with the tare weight or mass weight. Additionally, the cylinder must be permanently marked with the water capacity. The owner of the cylinder at the time of manufacture must ensure it is marked with the following information, as applicable:

(i) *Tare weight.* The tare weight for a cylinder 25 pounds (11.34 kg) or less at the time of manufacture, with a lower tolerance of 3 percent and an upper tolerance of 1 percent; or for a cylinder exceeding 25 pounds (11.34 kg) at the time of manufacture, with a lower tolerance of 2 percent and an upper tolerance of 1 percent. The tare weight marking must be the actual weight of the fully assembled cylinder, including the valve(s) and other permanently affixed appurtenances. Removable protective cap(s) or cover(s) must not be included in the cylinder tare weight, or

(ii) *Mass weight.* The mass weight for a cylinder 25 pounds (11.34 kg) or less at the time of manufacture, with a lower tolerance of 3 percent and an upper tolerance of 1 percent; or the mass weight marking for a cylinder exceeding 25 pounds (11.34 kg) at the time of manufacture, with a lower tolerance of 2 percent and an upper tolerance of 1 percent. The mass weight marking must be the actual weight of the fully assembled cylinder, excluding valve(s) and removable protective cap(s) or cover(s); and

(iii) *Water capacity.* The water capacity for a cylinder 25 pounds (11.34 kg) water capacity or less, with a tolerance of minus 1 percent and no upper tolerance; or for a cylinder exceeding 25 pounds (11.34 kg) water capacity, with a tolerance of minus 0.5 percent and upper tolerance. The marked water capacity of the cylinder must be the capacity of the cylinder at the time of manufacture.

* * * * *

■ 21. In § 178.36, revise paragraph (i) to read as follows:

§ 178.36 Specification 3A and 3AX seamless steel cylinders.

* * * * *

(i) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) The test must be by water-jacket or direct expansion method as prescribed in CGA C–1 (IBR; see § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(2) Each cylinder must be tested to a minimum of 5/3 times service pressure.

(3) The minimum test pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error the test pressure cannot be maintained the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(4) Permanent, volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

* * * * *

■ 22. In § 178.37, revise paragraph (i) to read as follows:

§ 178.37 Specification 3AA and 3AAX seamless steel cylinders.

* * * * *

(i) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) The test must be by water-jacket or direct expansion method as prescribed in CGA C–1 (IBR; see § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(2) Each cylinder must be tested to a minimum of 5/3 times service pressure.

(3) The minimum test pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error the test pressure cannot be maintained the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(4) Permanent, volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

* * * * *

■ 23. In § 178.38, revise paragraph (i) to read as follows:

§ 178.38 Specification 3B seamless steel cylinders.

* * * * *

(i) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) The test must be by water-jacket or direct expansion method as defined in CGA C–1 (IBR; see § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA Pamphlet C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA Pamphlet C–1.

(2) Cylinders must be tested as follows:

(i) Each cylinder to at least two (2) times its service pressure; or

(ii) One (1) cylinder out of each lot of 200 or fewer to at least three (3) times its service pressure.

(3) When each cylinder is tested to the minimum test pressure, the minimum test pressure must be maintained at least 30 seconds and sufficiently longer to

ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(4) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(5) When one (1) cylinder out of each lot of 200 or less is tested to at least 3 times service pressure, the balance of the lot must be pressure tested by the water-jacket, direct expansion or proof pressure test methods as defined in CGA C–1. The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1. The cylinders must be subjected to at least 2 times service pressure and show no defect. Determination of expansion properties is not required.

* * * * *

■ 24. In § 178.39, revise paragraph (i) to read as follows:

§ 178.39 Specification 3BN seamless nickel cylinders.

* * * * *

(i) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) The test must be by water-jacket or direct expansion method as prescribed in CGA C–1 (IBR; see § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGAC–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(2) Each cylinder must be tested to a minimum of at least two (2) times its service pressure.

(3) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(4) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

* * * * *

■ 25. In § 178.42, revise paragraph (f) to read as follows:

§ 178.42 Specification 3E seamless steel cylinders.

* * * * *

(f) *Pressure testing.* Cylinders must withstand a pressure test as follows:

(1) *Lot Testing.* One cylinder out of each lot of 500 or fewer must be subjected to a test pressure of 6,000 psig or higher. The testing equipment must be calibrated as prescribed in CGA Pamphlet C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA Pamphlet C–1

(2) *Pressure Testing.* The remaining cylinders of the lot must be pressure tested by water jacket, direct expansion or proof pressure method as prescribed in CGA C–1 (IBR; see § 171.7 of this subchapter). The cylinders must be examined under pressure of at least 3,000 psig and not to exceed 4,500 psig and show no defect. The test pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete examination.

(3) *Burst Testing.* (i) The cylinder in paragraph (f)(1) of this section must burst at a pressure higher than 6,000 psig without fragmenting or otherwise showing lack of ductility, or must hold a pressure of 12,000 psig for 30 seconds without bursting. In which case, it must be subjected to a flattening test without cracking to six (6) times wall thickness between knife edges, wedge shaped 60-degree angle, rounded out to a half-inch radius. The inspector's report must be suitably changed to show results of latter alternate and flattening test.

(ii) The cylinders in paragraph (f)(2) tested at a pressure in excess of 3,600 psig must burst at a pressure higher than 7,500 psig.

* * * * *

■ 26. In § 178.44, revise paragraph (i) to read as follows:

§ 178.44 Specification 3HT seamless steel cylinders for aircraft use.

* * * * *

(i) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) The test must be by water-jacket or direct expansion method as prescribed in CGA C–1 (IBR; *see* § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(2) Each cylinder must be tested to minimum of 5/3 times service pressure.

(3) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(4) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

* * * * *

■ 27. In § 178.45, revise paragraph (g) to read as follows:

§ 178.45 Specification 3T seamless steel cylinder.

* * * * *

(g) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) The test must be by water-jacket or direct expansion method as prescribed in CGA C–1 (IBR; *see* § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(2) Each cylinder must be tested to minimum of 5/3 times service pressure.

(3) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(4) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

* * * * *

■ 28. In § 178.46, revise paragraph (g) to read as follows:

§ 178.46 Specification 3AL seamless aluminum cylinders.

* * * * *

(g) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) The test must be by water-jacket or direct expansion method as prescribed in CGA C–1 (IBR; see § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(2) The minimum test pressure must be the greater of the following:

(i) 450 psig regardless of service pressure;

(ii) Two (2) times the service pressure for cylinders having service pressure less than 500 psig; or

(iii) 5/3 times the service pressure for cylinders having a service pressure of 500 psig or greater.

(3) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower. If the test apparatus again fails to maintain the test pressure, the cylinder being tested must be condemned. Any internal pressure applied to the cylinder before any official test may not exceed 90 percent of the test pressure.

(4) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

* * * * *

■ 29. In § 178.47, revise paragraph (j) to read as follows:

§ 178.47 Specification 4DS welded stainless steel cylinders for aircraft use.

* * * * *

(j) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) The test must be by water-jacket or direct expansion method as prescribed in CGA C–1 (IBR; *see* § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(2) Each cylinder must be tested to a minimum of at least two (2) times its service pressure.

(3) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(4) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(5) *Cause for condemnation.* Following the pressure test, the cylinder must be inspected. A cylinder with wall thickness less than that required by paragraph (f) of this section must be condemned. Bulges and cracks are cause for condemnation. Welded joint defects exceeding requirements of paragraph (k) of this section are cause for condemnation.

* * * * *

■ 30. Revise § 178.50 to read as follows:

§ 178.50 Specification 4B welded or brazed steel cylinders.

(a) *Type, size, pressure, and application.* A DOT 4B is a welded or brazed steel cylinder with longitudinal seams that are forged lap-welded or brazed and with water capacity (nominal) not over 1,000 pounds and a service pressure of at least 150 but not over 500 psig. Cylinders closed in by spinning process are not authorized.

(b) *Steel.* Open-hearth, electric or basic oxygen process steel of uniform quality must be used. Content percent may not exceed the following: carbon, 0.25; phosphorus, 0.045; sulphur, 0.050. The cylinder manufacturer must maintain a record of intentionally added alloying elements.

(c) *Identification of material.* Pressure-retaining materials must be identified by any suitable method that does not compromise the integrity of the cylinder. Plates and billets for hotdrawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Exposed bottom welds on cylinders over 18 inches long must be protected by footrings. Welding procedures and operators must be qualified in conformance with CGA C–3 (IBR, *see* § 171.7 of this subchapter). Seams must be made as follows:

(1) *Brazing materials.* Brazing materials must be by copper brazing, by copper alloy brazing, or by silver alloy brazing. Copper alloy composition must be: Copper, 95 percent minimum; Silicon, 1.5 percent to 3.85 percent; Manganese, 0.25 percent to 1.10 percent.

(2) *Brazed circumferential seams.* Heads attached by brazing must have a driving fit with the shell, unless the shell is crimped, swedged, or curled over the skirt or flange of the head, and be thoroughly brazed until complete penetration by the brazing material of the brazed joint is secured. Depth of brazing of the joint must be at least four (4) times the minimum thickness of shell metal.

(3) *Welded circumferential seams.* Circumferential seams are permitted by the welding process.

(4) *Longitudinal seams in shells.* Longitudinal seams must be a forged lap joint design. When brazed, the plate edge must be lapped at least eight (8) times the thickness of the plate, laps being held in position, substantially metal to metal, by riveting or electric spot-welding; brazing must be done by using a suitable flux and by placing brazing material on one side of seam and applying heat until this material shows uniformly along the seam of the other side.

(e) *Welding or brazing.* Only the attachment of neckrings, footrings, handles, bosses, pads, and valve protection rings to the tops and bottoms of cylinders by welding or brazing is authorized. Attachments and the portion of the cylinder to which they are attached must be made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130X steel, which may be used with proper welding procedure.

(f) *Wall thickness.* The wall thickness of the cylinder must comply with the following requirements:

(1) For cylinders with outside diameters over 6 inches, the minimum wall thickness must be 0.090 inch. In any case, the minimum wall thickness must be such that calculated wall stress at minimum test pressure (paragraph (i)(4) of this section) may not exceed the following values:

(i) 24,000 psi for cylinders without longitudinal seam.

(ii) 22,800 psig for cylinders having copper brazed or silver alloy brazed longitudinal seam.

(iii) 18,000 psi for cylinders having forged lapped welded longitudinal seam.

(2) Calculation must be made by the formula:

$$S = [P(1.3D^2 + 0.4d^2)]/(D^2 - d^2)$$

Where:

S = wall stress in psi;
P = minimum test pressure prescribed for water jacket test or 450 psig whichever is the greater;
D = outside diameter in inches;
d = inside diameter in inches.

(g) *Heat treatment.* Cylinder heads, bodies or the completed cylinder, formed by drawing or pressing, must be uniformly and properly heat treated by an applicable method shown in table 1 of appendix A of this part before tests.

(h) *Opening in cylinders.* Openings in cylinders must comply with the following:

(1) Any opening must be placed on other than a cylindrical surface.

(2) Each opening in a spherical type of cylinder must be provided with a fitting, boss, or pad of weldable steel securely attached to the cylinder by fusion welding.

(3) Each opening in a cylindrical type cylinder, except those for pressure relief devices, must be provided with a fitting, boss, or pad, securely attached to container by brazing or by welding.

(4) If threads are used, they must comply with the following:

(i) Threads must be clean cut, even without checks, and tapped to gauge.

(ii) Taper threads must be of a length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads, must have at least four (4) engaged threads, must have tight fit and a calculated shear strength at least ten (10) times the test pressure of the cylinder; gaskets are required for straight threads and must be of sufficient quality to prevent leakage.

(iv) A brass fitting may be brazed to the steel boss or flange on cylinders used as component parts of handheld fire extinguishers.

(5) The closure of a fitting, boss, or pad must be adequate to prevent leakage.

(i) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) *Lot testing.* (i) At least one (1) cylinder randomly selected out of each lot of 200 or fewer must be tested by the water jacket or direct expansion method as prescribed in CGA C–1 (IBR; see § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(ii) Each cylinder must be tested to a minimum of 2 times service pressure.

(iii) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(iv) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(2) *Pressure testing.* (i) The remaining cylinders in the lot must be tested by the water-jacket, direct expansion or proof pressure test methods as prescribed in CGA C–1. The minimum test pressure must be maintained for a specific timeframe as prescribed and the testing equipment must be calibrated as prescribed in CGA C–1. Further, all testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1. Determination of expansion properties is not required.

(ii) Each cylinder must be tested to a minimum of at least two (2) times service pressure and show no defect.

(j) *Mechanical test.* A mechanical test must be conducted to determine yield strength, tensile strength, elongation as a percentage, and reduction of area of material as a percentage as follows:

(1) Testing is required on two (2) specimens removed from one (1) cylinder, or part thereof, heat-treated as required, as illustrated in appendix A to subpart C of this part. For lots of 30 or fewer, mechanical tests are authorized to be made on a ring at least 8 inches long removed from each cylinder and subjected to the same heat of material taken as the finished cylinder.

(2) Specimens must comply with the following:

(i) When a cylinder wall is 3/16 inch thick or less, one the following gauge lengths is authorized: A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least twenty-four (24) times the thickness with a width not over six (6) times the thickness.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When the size of a cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are taken and prepared using this method, the inspector's report must show detailed information regarding such specimens in connection with the record of mechanical tests.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM E 8 (IBR, see § 171.7 of this subchapter).

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain reference must be set while the specimen is under a stress of 12,000 psi, and strain indicator reading must be set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed 18 inch per minute during yield strength determination.

(v) The yield strength must not exceed 73 percent of the tensile strength.

(k) *Elongation.* Mechanical test specimens must show at least a 20 percent elongation. However, elongation percentages may be reduced numerically by one (1) percentage for each 7,500 psi increase of tensile strength above 50,000 psi. The tensile strength may be incrementally increased by a maximum total of 30,000 psi.

(l) *Flattening test.* (1) *Cylinders.* After pressure testing, a flattening test must be performed on one cylinder taken at random out of each lot of 200 or fewer by placing the cylinder between wedge-shaped knife edges having a 60 degree included angle, rounded to a half-inch radius. The longitudinal axis of the cylinder must be at a 90-deqree angle to knife edges during the test. For lots of 30 or fewer, flattening tests are authorized to be performed on a ring of at least 8 inches long removed from each cylinder and subjected to same heat of material taken as the finished cylinder.

(2) *Pipes.* When cylinders are constructed of lap welded pipe, an additional flattening test is required, without evidence of cracking, up to six (6) times the wall thickness. In such case, the rings (crop ends) removed from each end of the pipe, must be tested with the weld 45 °F or less from the point of greatest stress.

(m) *Acceptable results for flattening tests.* There must be no evidence of cracking of the sample when it is flattened between flat plates to no more than six (6) times the wall thickness. If this test fails, one additional sample from the same lot may be taken. If this second sample fails, the entire lot must be condemned.

(n) *Condemned cylinders.* (1) Unless otherwise stated in this section, if a sample cylinder or specimen taken from a lot of cylinders fails the prescribed test, then two additional specimens must be selected from the same lot and subjected to the prescribed test. If either of these fails the test, then the entire lot must be condemned.

(2) *Reheat treatment of a condemned cylinder.* Reheat treatment is authorized for a condemned cylinder in accordance with this paragraph. After reheat treatment, a cylinder must pass all prescribed tests in this section to be considered acceptable. Repair of brazed seams by brazing and welded seams by welding is authorized. For cylinders with an outside diameter of less than or equal to six (6) inches, welded seam repairs greater than one (1) inch in length shall require reheat treatment of the cylinder. For cylinders greater than an outside diameter of 6 inches, welded seam repairs greater than three (3) inches in length shall require reheat treatment.

(o) *Markings.* (1) Markings must be as required as in § 178.35 of this subpart and in addition must be stamped plainly and permanently in any of the following locations on the cylinder:

(i) On shoulders and top heads whose wall thickness is not less than 0.087-inch thick;

(ii) On side wall adjacent to top head for side walls which are not less than 0.090 inch thick;

(iii) On a cylindrical portion of the shell that extends beyond the recessed bottom of the cylinder, constituting an integral and non-pressure part of the cylinder;

(iv) On a metal plate attached to the top of the cylinder or permanent part thereof; sufficient space must be left on the plate to provide for stamping at least six retest dates; the plate must be at least 1/16-inch thick and must be attached by welding, or by brazing. The brazing rod must melt at a temperature of 1100 °F. Welding or brazing must be along all the edges of the plate;

(v) On the neck, neckring, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder; or

(vi) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 30 pounds.

(2) Embossing the cylinder head or sidewall is not permitted.

■ 31. Revise § 178.51 to read as follows:

§ 178.51 Specification 4BA welded or brazed steel cylinders.

(a) *Type, size, pressure, and application.* A DOT 4BA cylinder is a cylinder, either spherical or cylindrical design, with a water capacity of 1,000 pounds or less and a service pressure range of 225 to 500 psig. Closures made by the spinning process are not authorized.

(1) Spherical type cylinder designs are permitted to have only one circumferentially welded seam.

(2) Cylindrical type cylinder designs must be of circumferentially welded or brazed construction; longitudinally brazed or silver-soldered seams are also permitted.

(b) *Steel.* The steel used in the construction of the cylinder must be as specified in table 1 of appendix A to this part. The cylinder manufacturer must maintain a record of intentionally added alloying elements.

(c) *Identification of material.* Pressure-retaining material must be identified by any suitable method that does not compromise the integrity of the cylinder. Plates and billets for hotdrawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to appreciably weaken the finished cylinder. A reasonably smooth and uniform surface finish is required. Exposed bottom welds on cylinders over 18 inches long must be protected by footrings.

(1) Seams must be made as follows:

(i) Minimum thickness of heads and bottoms must be not less than 90 percent of the required thickness of the side wall.

(ii) Circumferential seams must be made by welding or by brazing. Heads attached by brazing must have a driving fit with the shell unless the shell is crimped, swedged or curled over the skirt or flange of the head and must be thoroughly brazed until complete penetration by the brazing material of the brazed joint is secured. Depth of brazing from end of the shell must be at least four (4) times the thickness of shell metal.

(iii) Longitudinal seams in shells must be made by copper brazing, copper alloy brazing, or by silver alloy brazing. Copper alloy composition must be: Copper 95 percent minimum, Silicon 1.5 percent to 3.85 percent, Manganese 0.25 percent to 1.10 percent. The melting point of the silver alloy brazing material must be in excess of 1,000 °F. The plate edge must be lapped at least eight times the thickness of plate, laps being held in position, substantially metal to metal, by riveting or by electric spot-welding. Brazing must be done by using a suitable flux and by placing brazing material on one side of seam and applying heat until this material shows uniformly along the seam of the other side. Strength of longitudinal seam: Copper brazed longitudinal seam must have strength at least 3/2 times the strength of the steel wall.

(2) Welding procedures and operators must be qualified in conformance with CGA C–3 (IBR, *see* § 171.7 of this subchapter).

(e) *Welding or brazing.* Welding or brazing of any attachment or opening to the heads of cylinders is permitted provided the carbon content of the steel does not exceed 0.25 percent except in the case of 4130 × steel, which may be used with proper welding procedure.

(f) *Wall thickness.* The minimum wall thickness of the cylinder must meet the following conditions:

(1) For any cylinder with an outside diameter of greater than 6 inches, the minimum wall thickness is 0.078 inch. In any case, the minimum wall thickness must be such that the calculated wall stress at the minimum test pressure may not exceed the lesser value of any of the following:

(i) The value shown in table 1 of appendix A to this part, for the particular material under consideration;

(ii) One-half of the minimum tensile strength of the material determined as required in paragraph (j) of this section;

(iii) 35,000 psi; or

(iv) Further provided that wall stress for cylinders having copper brazed longitudinal seams may not exceed 95 percent of any of the above values. Measured wall thickness may not include galvanizing or other protective coating.

(2) Cylinders that are cylindrical in shape must have the wall stress calculated by the formula:

$$S = [P(1.3D^2 + 0.4d^2)]/(D^2 - d^2)$$

Where:

S = wall stress in psi;
P = minimum test pressure prescribed for water jacket test;
D = outside diameter in inches;
d = inside diameter in inches.

(3) Cylinders that are spherical in shape must have the wall stress calculated by the formula:

$$S = PD/4tE$$

Where:

S = wall stress in psi;
P = minimum test pressure prescribed for water jacket test;
D = outside diameter in inches;
t = minimum wall thickness in inches;
E = 0.85 (provides 85 percent weld efficiency factor which must be applied in the girth weld area and heat affected zones which zone must extend a distance of 6 times wall thickness from center line of weld);
E = 1.0 (for all other areas).

(4) For a cylinder with a wall thickness less than 0.100 inch, the ratio of tangential length to outside diameter may not exceed 4.1.

(g) *Heat treatment.* Cylinders must be heat treated in accordance with the following requirements:

(1) Each cylinder must be uniformly and properly heat treated prior to test by the applicable method shown in table 1 of appendix A to this part. Heat treatment must be accomplished after all forming and welding operations, except that when brazed joints are used, heat treatment must follow any forming and welding operations, but may be done before, during or after the brazing operations [*see* § 178.51(m) for weld repairs].

(2) Heat treatment is not required after the welding or brazing of weldable low carbon parts to attachments of similar material which have been previously welded or brazed to the top or bottom of cylinders and properly heat treated, provided such subsequent welding or brazing does not produce a temperature in excess of 400 °F in any part of the top or bottom material.

(h) *Openings in cylinders.* Openings in cylinders must comply with the following requirements:

(1) Any opening must be placed on other than a cylindrical surface.

(2) Each opening in a spherical type cylinder must be provided with a fitting, boss, or pad of weldable steel securely attached to the container by fusion welding.

(3) Each opening in a cylindrical type cylinder must be provided with a fitting, boss, or pad, securely attached to container by brazing or by welding.

(4) If threads are used, they must comply with the following:

(i) Threads must be clean-cut, even, without checks and tapped to gauge.

(ii) Taper threads must be of a length not less than that specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, must have a tight fit and a calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) *Lot testing.* (i) At least one (1) cylinder randomly selected out of each lot of 200 or fewer must be tested by water jacket or direct expansion method as prescribed in CGA C–1 (IBR, see § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(ii) Each cylinder must be tested to a minimum of two (2) times service pressure.

(iii) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(iv) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(2) *Pressure testing.* (i) The remaining cylinders in the lot must be tested by the water-jacket, direct expansion or proof pressure test methods as prescribed in CGA C–1. The minimum test pressure must be maintained for a specific timeframe and the testing equipment must be calibrated as prescribed in CGA C–1. Further, all testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1. Determination of expansion properties is not required.

(ii) Each cylinder must be tested to a minimum of two (2) times service pressure and show no defect.

(j) *Mechanical test.* (1) A mechanical test must be conducted to determine yield strength, tensile strength, elongation as a percentage, and reduction of area of material as a percentage, as follows:

(i) *Cylinders.* Testing is required on two (2) specimens removed from one cylinder or part thereof taken at random out of each lot of 200 or fewer. Samples must be removed as illustrated in appendix A to subpart C of this part.

(ii) *Spheres.* Testing is required on two (2) specimens removed from the sphere or flat representative sample plates of the same heat of material taken at random from the steel used to produce the spheres. Samples (including plates) must be taken from each lot of 200 or fewer. The flat steel from which two specimens are to be removed must receive the same heat of material taken as the as the spheres themselves. Samples must be removed as illustrated in appendix A to subpart C of this part.

(2) Specimens must comply with the following:

(i) When a cylinder wall is $3/16$ inch thick or less, one the following gauge lengths is authorized: A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least twenty-four (24) times the thickness with a width not over six (6) times the thickness.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of the cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM E 8 (IBR, see § 171.7 of this subchapter).

(ii) In using the "extension under load" method, the total strain (or "extension under load"), corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain reference must be set while the specimen is under a stress of 12,000 psi, and the strain indicator reading must be set at the calculated corresponding strain.

(k) *Elongation.* Mechanical test specimens must show at least a 40 percent elongation for a 2-inch gauge length or at least 20 percent in other cases. However, elongation percentages may be reduced numerically by 2 percent for 2-inch specimens, and by 1 percent in other cases, for each 7,500 psi increase of tensile strength above 50,000 psi. The tensile strength may be incrementally increased by a maximum total of 30,000 psi.

(l) *Tests of welds.* Except for brazed seams, welds must be tested as follows:

(1) *Tensile test.* A specimen must be removed from one cylinder of each lot

of 200 or fewer, or welded test plate. The welded test plate must be of one of the heats in the lot of 200 or fewer which it represents, in the same condition and approximately the same thickness as the cylinder wall except that in no case must it be of a lesser thickness than that required for a quarter size Charpy impact specimen. The weld must be made by the same procedures and subjected to the same heat of material taken as the major weld on the cylinder. The specimen must be taken from across the major seam and must be prepared and tested in conformance with and must meet the requirements of CGA C–3 (IBR, *see* § 171.7 of this subchapter). Should this specimen fail to meet the requirements, one additional specimen must be taken from two additional cylinders or welded test plates from the same lot and tested. If any of these latter two specimens fail to meet the requirements, the entire lot represented must be condemned.

(2) *Guided bend test.* A root bend test specimen must be removed from the cylinder or welded test plate, used for the tensile test specified in paragraph (l)(1) of this section. The specimen must be taken from across the circumferential seam and must be prepared and tested in conformance with and must meet the requirements of CGA C–3. Should this specimen fail to meet the requirements, one additional specimen must be taken from two additional cylinders or welded test plates from the same lot and tested. If any of these latter two specimens fail to meet the requirements, the entire lot represented must be condemned.

(3) *Alternate guided-bend test.* This test may be used and must be as required by CGA C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gage lines a to b, must be at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 50,000 psig, as provided in paragraph (k) of this section. Should the specimen fail to meet the requirements, one additional specimen must be taken from two additional cylinders or welded test plates from the same lot and tested. If any of these latter two specimens fail to meet the requirements, the entire lot represented must be condemned.

(m) *Condemned cylinders.*

(1) Unless otherwise stated in this section, if a sample cylinder or specimen taken from a lot of cylinders fails the prescribed test, then two additional specimens must be selected from the same lot and subjected to the prescribed test. If either of these additional specimens fails the test, then the entire lot must be condemned.

(2) *Reheat treatment of a condemned cylinder.* Reheat treatment is authorized for a condemned cylinder in accordance with this paragraph. After reheat, a cylinder must pass all prescribed tests in this section to be acceptable. Repair of brazed seams by brazing and welded seams by welding is considered authorized. For cylinders with an outside diameter of less than or equal to six (6) inches, welded seam repairs greater than one (1) inch in length shall require reheat treatment of the cylinder. For cylinders greater than an outside diameter of six (6) inches, welded seam repairs greater than three (3) inches in length shall require reheat treatment.

(n) *Markings.* (1) Markings must be as required in § 178.35 of this subpart and in addition must be stamped plainly and permanently in one of the following locations on the cylinder:

(i) On shoulders and top heads whose wall thickness is not less than 0.087 inch thick;

(ii) On side wall adjacent to top head for side walls not less than 0.090 inch thick;

(iii) On a cylindrical portion of the shell that extends beyond the recessed bottom of the cylinder constituting an integral and non-pressure part of the cylinder;

(iv) On a plate attached to the top of the cylinder or permanent part thereof; sufficient space must be left on the plate to provide for stamping at least six retest dates; the plate must be at least 1⁄16-inch thick and must be attached by welding, or by brazing at a temperature of at least 1100 °F, throughout all edges of the plate;

(v) On the neck, neckring, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder; or

(vi) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 30 pounds.

(2) Embossing the cylinder head or side is not permitted.

■ 32. In § 178.53, revise paragraph (h) to read as follows:

§ 178.53 Specification 4D welded steel cylinders for aircraft use.

* * * * *

(h) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) *Lot Testing.* (i) At least one cylinder selected at random out of each lot of 200 or fewer must be tested by water-jacket or direct expansion as prescribed in CGA C–1 (IBR; *see* § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(ii) Each cylinder must be tested to a minimum of three (3) times service pressure.

(iii) The minimum test pressure must be maintained be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(iv) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(2) *Pressure testing.* (i) The remaining cylinders in each lot must be tested by the water-jacket, direct expansion or proof pressure test methods as prescribed in CGA C–1. The minimum test pressure must be maintained for a specific timeframe, and the testing equipment must be calibrated as prescribed in CGA C–1. Further, all testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1. Determination of expansion properties is not required.

(ii) Each cylinder must be tested to a minimum of two (2) times service pressure and show no defect.

* * * * *

■ 33. In § 178.55, revise paragraph (i) to read as follows:

§ 178.55 Specification 4B240ET welded or brazed cylinders.

* * * * *

(i) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) *Lot Testing.* (i) At least one (1) cylinder selected at random out of each lot of 200 or fewer must be tested by water-jacket or direct expansion method as prescribed in CGA C–1 (IBR; *see* § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(ii) Each cylinder must be tested to a minimum of two (2) times service pressure.

(iii) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(iv) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(2) *Pressure testing.* (i) The remaining cylinders in each lot must be tested by the water-jacket, direct expansion or proof pressure test methods as prescribed in CGA C–1. The minimum test pressure must be maintained for a specific timeframe, and the testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1. Determination of expansion properties is not required.

(ii) Each cylinder must be tested to a minimum of two (2) times service pressure and show no defect.

(3) *Burst testing.* (i) For purposes of burst testing, each 1,000 cylinders or fewer successively produced each day constitutes a lot. All cylinders of a lot must be of identical size, construction heat treatment, finish, and quality.

(ii) One cylinder must be selected from each lot and be hydrostatically pressure tested to destruction. If this cylinder bursts below five (5) times the service pressure, then two additional cylinders from the same lot as the previously tested cylinder must be selected and subjected to this test. If either of these cylinders fails by bursting below five (5) times the service pressure then the entire lot must be condemned.

* * * * *

■ 34. In § 178.56, revise paragraph (i) to read as follows:

§ 178.56 Specification 4AA480 welded steel cylinders.

* * * * *

(i) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) *Lot testing.* (i) At least one (1) cylinder selected at random out of each lot of 200 or fewer must be tested by water-jacket or direct expansion method as prescribed in CGA C–1 (IBR; *see* § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(ii) Each cylinder must be tested to a minimum of two (2) times service pressure.

(iii) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(iv) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(v) If a selected cylinder fails, then two (2) additional specimens must be selected at random from the same lot and subjected to the prescribed testing. If either of these fails the test, then each cylinder in that lot must be tested as prescribed in paragraph (i)(l) of this section.

(2) *Pressure testing.* (i) The remaining cylinders in each lot must be tested by the water-jacket, direct expansion or proof pressure test methods as prescribed in CGA C–1. The minimum test pressure must be maintained for a specific timeframe, and the testing equipment must be calibrated as prescribed in CGA C–1. Further, all testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1. Determination of expansion properties is not required.

(ii) Each cylinder must be tested to a minimum of two (2) times service pressure and show no defect. A cylinder showing a defect must be condemned unless it may be requalified under paragraph (m) of this section.

* * * * *

■ 35. In § 178.57, revise paragraph (i) to read as follows:

§ 178.57 Specification 4L welded insulated cylinders.

* * * * *

(i) *Pressure testing.* Each cylinder, before insulating and jacketing, must successfully withstand a pressure test as follows:

(1) The cylinder must be tested by water-jacket, direct expansion, or proof pressure test methods as prescribed in CGA C–1 (IBR; *see* § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(2) Each cylinder must be tested to a minimum of two (2) times service pressure.

(3) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(4) There must be no evidence of leakage, visible distortion or other defect.

* * * * *

■ 36. In § 178.58, revise paragraph (i) to read as follows:

§ 178.58 Specification 4DA welded steel cylinders for aircraft use.

* * * * *

(i) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) The test must be by water-jacket or direct expansion method as prescribed in CGA C–1 (IBR; *see* § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(2) Each cylinder must be tested to a minimum of two (2) times service pressure.

(3) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(4) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

* * * * *

■ 37. In § 178.59, revise paragraph (h) to read as follows:

§ 178.59 Specification 8 steel cylinders with porous fillings for acetylene.

* * * * *

(h) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) *Lot testing.* (i) At least one (1) cylinder selected at random out of each lot of 200 or fewer must be tested by water-jacket or direct expansion method

as prescribed in CGA C–1 (IBR; *see* § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(ii) Each cylinder must be tested to a minimum of 750 psig.

(iii) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(iv) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(v) If the tested cylinder fails, each cylinder remaining in the lot may be tested in lieu of paragraph (h)(2) of this section by the water-jacket or direct expansion method as prescribed in CGA C–1. Those passing are acceptable.

(2) *Pressure testing.* (i) The remaining cylinders in each lot must be pressure tested by the water-jacket, direct expansion or proof pressure test methods as prescribed in CGA C–1. The minimum test pressure must be maintained for a specific timeframe, and the testing equipment must be calibrated as prescribed in CGA C–1. Further, all testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1. Determination of expansion properties is not required.

(ii) Each cylinder must be tested between 500 and 600 psig and show no defect.

* * * * *

■ 38. In § 178.60, revise paragraph (j) to read as follows:

§ 178.60 Specification 8AL steel cylinders with porous fillings for acetylene.

* * * * *

(j) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) *Lot Testing.* (i) At least one (1) cylinder selected at random out of each lot of 200 or less must be tested by water-jacket or direct expansion method as prescribed in CGA C–1 (IBR; *see* § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(ii) Each cylinder must be tested to a minimum of 750 psig.

(iii) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(iv) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(v) If the tested cylinder fails, each remaining cylinder in the lot may be tested in lieu of paragraph (j)(2) of this section by the water-jacket or direct expansion method as prescribed in CGA C–1. Those passing are acceptable.

(2) *Pressure testing.* (i) The remaining cylinders in each lot must be pressure tested by the water-jacket, direct expansion or proof pressure test methods as prescribed in CGA C–1. The minimum test pressure must be maintained for a specific timeframe, and the testing equipment must be calibrated as prescribed in CGA C–1. Further, all testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1. Determination of expansion properties is not required.

(ii) Each cylinder must be tested between 500 and 600 psig and show no defect.

* * * * *

■ 39. Revise § 178.61 to read as follows:

§ 178.61 Specification 4BW welded steel cylinders with electric-arc welded seam.

(a) *Type, size, pressure, and application.* A DOT 4BW cylinder has a spherical or cylindrical design, a water capacity of 1,000 pounds or less, and a service pressure range of 225 to 500 psig. Closures made by the spinning process are not authorized.

(1) Spherical designs are permitted to have only one circumferentially electric-arc welded seam.

(2) Cylindrical designs must be of circumferentially welded electric-arc construction; longitudinally electric-arc welded seams are permitted.

(b) *Steel.* (1) The steel used in the construction of the cylinder must be as specified in table 1 of appendix A to this part. The cylinder manufacturer must maintain a record of intentionally added alloying elements.

(2) Material for heads must meet the requirements of paragraph (b)(1) of this section or be open hearth, electric or basic oxygen carbon steel of uniform quality. Content percent may not exceed the following: Carbon 0.25, Manganese 0.60, Phosphorus 0.045, Sulfur 0.050. Heads must be hemispherical or ellipsoidal in shape with a maximum ratio of 2:1. If low carbon steel is used, the thickness of such heads must be determined by using a maximum wall stress of 24,000 psi in the formula described in paragraph (g)(4) of this section.

(c) *Identification of material.* Pressure-retaining materials must be identified by any suitable method that does not compromise the integrity of the cylinder. Plates and billets for hotdrawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart and the following:

(1) No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface is required. Exposed bottom welds on cylinders over 18 inches long must be protected by footrings. Minimum thickness of heads may not be less than 90 percent of the required thickness of the sidewall. Heads must be concave to pressure.

(2) Circumferential seams must be by electric-arc welding. Joints must be butt with one member offset (joggle butt) or with a lap joint. Lap joints must have a minimum overlap of at least four (4) times nominal sheet thickness.

(3) Longitudinal electric-arc welded seams (in shells) must be of the butt welded type. Welds must be made by a machine process including automatic feed and welding guidance mechanisms. Longitudinal seams must have complete joint penetration, and must be free from undercuts, overlaps or abrupt ridges or valleys. Misalignment of mating butt edges may not exceed 1⁄6 inch of nominal sheet thickness or 1⁄32 inch whichever is less. All joints with nominal sheet thickness up to and including 1⁄8 inch must be tightly butted. When nominal sheet thickness is greater than 1⁄8 inch, the joint must be gapped with maximum distance equal to one-half the nominal sheet thickness or 1⁄32 inch whichever is less. Joint design, preparation, and fit-up must be such that requirements of this paragraph (d) are satisfied.

(4) Welding procedures and operators must be qualified in accordance with CGA C–3 (IBR, see § 171.7 of this subchapter).

(e) *Welding of attachments.* The attachment to the tops and bottoms only of cylinders by welding of neckrings, footrings, handles, bosses, pads and valve protection rings is authorized provided that such attachments and the portion of the container to which they are attached are made of weldable steel, the carbon content of which may not exceed 0.25 percent.

(f) *Non-destructive examination.* (1) Welds of the cylinders must be subjected to radioscopic or radiographic examination as follows:

(2) Radioscopy or radiography must be in conformance with CGA C–3 (IBR; *see* § 171.7 of this subchapter). Maximum joint efficiency will be 1.0 when each seam is examined completely. Maximum joint efficiency will be 0.90 when one cylinder from each lot of 50 consecutively welded cylinders is spot examined. In addition, one out of the first five cylinders welded following a shutdown of welding operations exceeding four hours must be spot examined. Spot radiographs, when required, must be made of a finished welded cylinder and must include the girth weld for 2 inches in both directions from the intersection of the longitudinal and girth welds and include at least 6 inches of the longitudinal weld. Maximum joint efficiency of 0.75 will be permissible without radiography. When fluoroscopic examination is used, permanent film records need not be retained.

(g) *Wall thickness.* (1) For outside diameters over 6 inches the minimum wall thickness must be 0.078 inch. In any case, the minimum wall thickness must be such that the wall stress calculated by the formula listed in paragraph (g)(2) of this section may not exceed the lesser value of any of the following:

(i) The value referenced in paragraph (b) of this section for the particular material under consideration.

(ii) One-half of the minimum tensile strength of the material determined as required in paragraph (k) of this section.

(iii) 35,000 psi.

(2) Stress must be calculated by the following formula:

$$S = [2P(1.3D^2 + 0.4d^2)]/[E(D^2 - d^2)]$$

Where:

S = wall stress, psi;
P = service pressure, psig;
D = outside diameter, inches;
d = inside diameter, inches;
E = joint efficiency of the longitudinal seam (from paragraph (d) of this section).

(3) For a cylinder with a wall thickness less than 0.100 inch, the ratio of tangential length to outside diameter may not exceed 4 to 1 (4:1).

(h) *Heat treatment.* Cylinders must be heat treated in accordance with the following requirements:

(1) Each cylinder must be uniformly and properly heat treated prior to test by the applicable method referenced in table 1 of appendix A to this part. Heat treatment must be accomplished after all forming and welding operations, except that when brazed joints are used, heat treatment must follow any forming and welding operations, but may be done before, during or after the brazing operations (*see* § 178.51(m) of this subpart for weld repairs).

(2) Heat treatment is not required after welding of weldable low-carbon parts to attachments of similar material which have been previously welded to the top or bottom of cylinders and properly heat treated, provided such subsequent welding does not produce a temperature in excess of 400 °F in any part of the top or bottom material.

(i) *Openings in cylinders.* Openings in cylinders must comply with the following requirements:

(1) All openings must be in heads or bases.

(2) Each opening in a spherical-type cylinder must be provided with a fitting, boss, or pad of weldable steel securely attached to the cylinder by fusion welding.

(3) Each opening in a cylindrical-type cylinder must be provided with a fitting, boss, or pad securely attached to the cylinder by welding.

(4) If threads are used, they must comply with the following:

(i) Threads must be clean cut, even, without checks, and tapped to gauge.

(ii) Taper threads must be of length not less than as specified for American Standard Taper Pipe Threads.

(iii) Straight threads, having at least four (4) engaged threads, must have a tight fit and calculated shear strength at least ten (10) times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(iv) A brass fitting may be brazed to the steel boss or flange on cylinders used as component parts of handheld fire extinguishers.

(j) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) *Lot testing.* (i) At least one cylinder randomly selected out of each lot of 200 or less must be tested by the water-jacket or direct expansion method as prescribed in CGA C–1 (IBR, see § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(ii) Each cylinder must be tested to a minimum of two (2) times service pressure.

(iii) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(iv) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(2) *Pressure testing.* (i) The remaining cylinders in each lot must be pressure tested by the water-jacket, direct expansion or proof pressure test methods as prescribed in CGA C–1. The minimum test pressure must be maintained for a specific timeframe, and the testing equipment must be calibrated as prescribed in CGA C–1. Further, all testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1. Determination of expansion properties is not required.

(ii) Each cylinder must be tested to a minimum of two (2) times service pressure and show no defect.

(3) *Burst testing.* (i) One finished cylinder selected at random out of each lot of 500 or less must be hydrostatically tested to four (4) times service pressure without bursting.

(k) *Mechanical tests.* Mechanical tests must be conducted to determine yield strength, tensile strength, elongation as a percentage, and reduction of area of material as a percentage, as follows:

(1) Specimens must be taken from one cylinder after heat treatment as illustrated in appendix A to subpart C of this part, chosen at random from each lot of 200 or fewer, as follows:

(i) Body specimen. One specimen must be taken longitudinally from the body section at least 90 degrees away from the weld.

(ii) Head specimen. One specimen must be taken from either head on a cylinder when both heads are made of the same material. However, if the two heads are made of differing materials, a specimen must be taken from each head.

(iii) If due to welded attachments on the top head there is insufficient surface from which to take a specimen, it may be taken from a representative head of the same heat treatment as the test cylinder.

(2) Specimens must conform to the following:

(i) When a cylinder wall is 3⁄16 inch thick or less, one the following gauge lengths is authorized: A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least twenty-four (24) times the thickness with a width not over six (6) times the thickness.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section.

(iii) When size of the cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are taken and prepared in this manner, the inspector's report must show in connection with the record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "off-set" method or the "extension under load" method as prescribed in ASTM E 8 (IBR, see § 171.7 of this subchapter).

(ii) In using the "extension under load" method, the total strain (or "extension under load"), corresponding to the stress at which the 0.2-percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2-percent offset.

(iii) For the purpose of strain measurement, the initial strain reference must be set while the specimen is under a stress of 12,000 psi, and the strain indicator reading must be set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Elongation.* Mechanical test specimens must show at least a 20 percent elongation. However, elongation percentages may be reduced numerically by one (1) for each 7,500 psi of tensile strength above 50,000 psi to a maximum of four (4) increments (*i.e.,* 30,000 psi).

(m) *Tests of welds.* Welds must be subjected to the following tests:

(1) *Tensile test.* A specimen must be removed from one cylinder of each lot of 200 or fewer. The specimen must be taken from across the longitudinal seam and must be prepared and tested in conformance with the requirements of CGA C–3 (IBR, *see* § 171.7 of this subchapter).

(2) *Guided bend test.* A root bend test specimen must be removed from the cylinder or welded test plate used for the tensile test specified in paragraph (m)(1) of this section. Specimens must be taken from across the longitudinal seam and must be prepared and tested in conformance with the requirements of CGA C–3. If the specimen fails to meet the requirements, one specimen each must be taken from two additional cylinders or welded test plates from the same lot as the previously tested cylinder or added test plate and tested. If either of these latter two specimens fails to meet the requirements, the entire lot represented must be condemned.

(3) *Alternate guided bend test.* This test may be used and must be as required by CGA C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gauge lines a to b, must be at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 50,000 psi, as provided in paragraph (l) of this section. Should this specimen fail to meet the requirements, one additional specimen such must be taken from two additional cylinders or welded test plates from the same lot and tested as the previously tested cylinder or added test plate. If either of these latter two specimens fails to meet the requirements, the entire lot represented must be condemned.

(n) *Rejected cylinders.* (1) Unless otherwise stated, if a sample cylinder or specimen taken from a lot of cylinders fails the prescribed test, then two additional specimens must be selected from the same lot and subjected to the prescribed test. If either of these fails the test, then the entire lot must be rejected.

(2) *Reheat treatment of condemned cylinders.* Reheat treatment is authorized for a condemned cylinder in accordance with this paragraph. After reheat treatment, a cylinder must pass all prescribed tests in this section to be considered acceptable. Repair of welded seams by welding is authorized. For cylinders less than or equal to an outside diameter of 6 inches, welded seam repairs greater than 1 inch in length shall require reheat treatment of the cylinder. For cylinders greater than an outside diameter of 6 inches, welded seam repairs greater than 3 inches in length shall require reheat treatment.

(o) *Markings.* (1) Markings must be as required in § 178.35 of this subpart and in addition must be stamped plainly and permanently in one of the following locations on the cylinder:

(i) On shoulders and top heads whose wall thickness is not less than 0.087 inch thick.

(ii) On side wall adjacent to top head for side walls not less than 0.090 inch thick.

(iii) On a cylindrical portion of the shell that extends beyond the recessed bottom of the cylinder constituting an integral and non-pressure part of the cylinder.

(iv) On a plate attached to the top of the cylinder or permanent part thereof; sufficient space must be left on the plate to provide for stamping at least six retest dates; the plate must at least $^1/_{16}$-inch thick and must be attached by welding at a temperature of 1,100 °F, throughout all edges of the plate.

(v) On the neck, neckring, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder.

(vi) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 30 pounds.

(2) Embossing the cylinder head or side wall is not permitted.

(p) *Inspector's report.* In addition to the information required by § 178.35 of this subpart, the inspector's report must indicate the type and amount of radiography.

■ 40. In § 178.65, revise paragraph (f) to read as follows:

§ 178.65 Specification 39 non-reusable (non-refillable) cylinders.

* * * * *

(f) *Pressure testing.* (1) Each cylinder must be proof pressure tested as prescribed in CGA C–1 (IBR, *see* § 171.7 of this subchapter). The minimum test pressure must be maintained for a specific timeframe, and the testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(2) The leakage test must be conducted by submersion under water or by some other method that will be equally sensitive.

(3) If the cylinder leaks, evidences visible distortion or evidences any other defect while under test, it must be condemned (*see* paragraph (h) of this section).

* * * * *

■ 41. In § 178.68:

■ a. Revise paragraphs (b), (e), (h), (j) introductory text, (j)(1), (k), (l) and (m);

■ b. Redesignate paragraph (n) as paragraph (o); and

■ c. Add new paragraph (n).

The revisions, redesignation, and addition read as follows:

§ 178.68 Specification 4E welded aluminum cylinders.

* * * * *

(b) *Authorized material.* The cylinder must be constructed of aluminum of uniform quality. The following chemical analyses are authorized:

TABLE 1—AUTHORIZED MATERIALS

Designation	Chemical analysis—limits in percent 5154
Iron plus silicon	0.45 maximum.
Copper	0.10 maximum.
Manganese	0.10 maximum.
Magnesium	3.10/3.90.
Chromium	0.15/0.35.
Zinc	0.20 maximum.
Titanium	0.20 maximum.
Others, each	0.05 maximum.
Others, total	0.15 maximum.
Aluminum	remainder.

Note to Table 1: The aluminum used in the construction of the cylinder must be as specified in Table 1. The cylinder manufacturer must maintain a record of intentionally added alloying elements.

* * * * *

(e) *Welding.* The attachment to the tops and bottoms only of cylinders by welding of neckrings, flanges, footrings, handles, bosses, pads, and valve protection rings is authorized. However, such attachments and the portion of the cylinder to which it is attached must be made of weldable aluminum alloys.

* * * * *

(h) *Pressure testing.* Each cylinder must successfully withstand a pressure test as follows:

(1) All cylinders with a wall stress greater than 18,000 psi must be tested by water-jacket or direct expansion method as prescribed in CGA C–1 (IBR, see § 171.7 of this subchapter). The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(i) Each cylinder must be tested to a minimum of two (2) times service pressure.

(ii) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(iii) Permanent volumetric expansion may not exceed 12 percent of the total volumetric expansion at test pressure.

(2) *Lot testing.* (i) Cylinders with a wall stress of 18,000 psi or less may be lot tested. At least one cylinder randomly selected out of each lot of 200 or less must be tested by the water-jacket or direct expansion method as prescribed in CGA C–1. The testing equipment must be calibrated as prescribed in CGA C–1. All testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1.

(ii) Each cylinder must be tested to a minimum of two (2) times service pressure.

(iii) The minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(iv) Permanent volumetric expansion may not exceed 12 percent of the total volumetric expansion at test pressure.

(3) Pressure testing. (i) For cylinders with a wall stress of 18,000 psi or less, the remaining cylinders of the lot must be pressure tested by the water-jacket, direct expansion or proof pressure test methods as defined in CGA C–1. The minimum test pressure must be maintained for a specific timeframe, and the testing equipment must be calibrated as prescribed in CGA C–1. Further, all testing equipment and pressure indicating devices must be accurate within the parameters defined in CGA C–1. Determination of expansion properties is not required.

(ii) Each cylinder must be tested to a minimum of two (2) times service pressure and show no defect.

(4) *Burst Testing.* One (1) finished cylinder selected at random out of each lot of 1000 or less must be hydrostatically tested to four (4) times service pressure without bursting. Inability to meet this requirement must result in condemnation of the lot.

* * * * *

(j) *Mechanical test.* A mechanical test must be conducted to determine yield strength, tensile strength, elongation as a percentage, and reduction of area of material as a percentage as follows:

(1) The test is required on two (2) specimens removed from one cylinder or part thereof as illustrated in appendix A to subpart C of this part taken at random out of each lot of 200 or fewer.

* * * * *

(k) *Acceptable results for mechanical tests.* An acceptable result of the mechanical test requires a minimum tensile strength as defined in paragraph (f)(1)(ii) of this section, an elongation to at least 7 percent and yield strength not over 80 percent of tensile strength.

(l) *Weld tests.* Welds of the cylinder are required to successfully pass the following tests:

(1) *Reduced section tensile test.* A specimen must be removed from the cylinder used for the mechanical tests specified in paragraph (j) of this section. The specimen must be taken from across the seam; edges must be parallel for a distance of approximately 2 inches on either side of the weld. The specimen must be fractured in tension. The actual breaking stress must be a minimum of at least 30,000 psi. The apparent breaking stress calculated on the minimum design wall thickness must be a minimum of two (2) times the stress calculated under paragraph (f)(2) of this section. If the specimen fails to meet the requirements, the lot must be condemned except that specimens may be taken from two (2) additional cylinders from the same lot as the previously tested specimens. If either of the latter specimens fails to meet requirements, the entire lot represented must be condemned.

(2) *Guided bend test.* A bend test specimen must be removed from the cylinder used for the mechanical test specified in paragraph (j) of this section. The specimen must be taken across the circumferential seam, must be a minimum of 1½ inches wide, edges must be parallel and rounded with a file, and back-up strip, if used, must be removed by machining. The specimen must be tested as follows:

(i) The specimen must be bent to refusal in the guided bend test jig as illustrated in CGA C–3 (IBR, *see* § 171.7 of this subchapter). The root of the weld (inside surface of the cylinder) must be located away from the ram of the jig. The specimen must not show a crack or other open defect exceeding ⅛ inch in any direction upon completion of the test. Should this specimen fail to meet the requirements, one additional specimen must be taken from two additional cylinders from the same lot and tested. If either of the latter specimens fails to meet requirements, the entire lot represented must be condemned.

(ii) *Alternate guided bend test.* This test may be used as an alternate to the guided bend test. The test specimen must be in conformance with The Aluminum Association's "Welding Aluminum: Theory and Practice, Fourth Edition, 2002" (IBR, *see* § 171.7 of this subchapter). If the specimen fails to meet the requirements, one additional specimen must be taken from two additional cylinders or welded test plates from the same lot and tested. If any of these latter two specimens fails to meet the requirements, the entire lot must be condemned.

(m) *Condemned cylinders.* (1) Unless otherwise stated, if a sample cylinder or specimen taken from a lot of cylinders fails the prescribed test, then two additional specimens must be selected from the same lot and subjected to the prescribed test. If either of these fails the test, then the entire lot must be condemned.

(2) Repair of welded seams is authorized. Acceptable cylinders must pass all prescribed tests.

(n) *Markings.* (1) Markings must be as required in § 178.35 of this subpart and in addition must be stamped plainly and permanently in one of the following locations on the cylinder:

(i) On the neck, neckring, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder.

(ii) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 30 pounds.

(2) Embossing the cylinder head or side wall is not permitted.

* * * * *

■ 42. In § 178.70, revise paragraph (d) to read as follows:

§ 178.70 Approval of UN pressure receptacles.

* * * * *

(d) *Modification of approved pressure receptacle design type.* Modification of an approved UN/ISO pressure receptacle design type is not authorized without the approval of the Associate Administrator. However, modification of an approved UN/ISO pressure receptacle design type is authorized without an additional approval of the Associate Administrator provided the design modification is covered under the UN/ISO standard for the design type. A manufacturer seeking modification of an approved UN/ISO pressure receptacle design type may be required to submit design qualification test data to the Associate Administrator before production.

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 43. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 44. In § 180.203:

■ a. Add definitions for the words "accuracy," "accuracy grade," "actual test pressure," "calibrated cylinder," "error," "master gauge," "mobile unit," "over-pressurized," "percent permanent expansion," "precision," "proof pressure test," "reference gauge," and "service pressure" in alphabetical order; and

■ b. Revise the definition for the words "commercially free of corrosive components," "defect," and "test pressure."

The additions and revisions read as follows:

§ 180.203 Definitions

* * * * *

Accuracy means the conformance of a particular reading to a known standard. Accuracy is expressed as the percentage of error from, or degree of closeness to, the true value, such as the difference between the measurement result displayed by the instrument and the value obtained when a measurement standard is used to perform the measurement. This value may be represented as a percent of full scale.

Accuracy grade means the inherent quality of the device. It expresses the maximum error allowed for the device at any reading. Accuracy grade is expressed as a percentage of the full scale of the device.

Actual test pressure means the pressure applied to a cylinder during a requalification test.

Calibrated cylinder means a cylinder that has certified calibration points of pressure with corresponding expansion values. It is a secondary, derived standard used for the verification and demonstration of test system accuracy and integrity.

Commercially free of corrosive components means a hazardous material having a moisture content less than 55 ppm and free of components that will adversely react with the cylinder (*e.g.* chemical stress corrosion).

* * * * *

Defect means an imperfection requiring a cylinder to be rejected or condemned.

* * * * *

Error means the difference between the measured values and the true value.

* * * * *

Master gauge means a pressure indicating device that is used as a calibration standard, has an inherent accuracy grade equal to or better than the requirement for the pressure indicating device in the test apparatus, and is an instrument not used in the daily performance of cylinder testing.

Mobile unit means a vehicle specifically authorized under a RIN to carry out requalification operations identified under the RIN within a geographic area no more than 100 miles from the principle place of business of the RIN holder. Mobile units must comply with the requirements outlined in the approval issuance letter from the Associate Administrator for Hazardous Materials Safety (see § 107.805 of subchapter A of this chapter).

* * * * *

Over-pressurized means a condition in which the internal pressure applied to a cylinder has reached or exceeded the yield point of the cylinder.

Percent permanent expansion means the ratio of permanent expansion to total expansion, expressed as a percentage. The calculation for percent permanent expansion is the permanent expansion divided by total expansion times 100.

* * * * *

Precision of a measurement means the degree of scatter of the recorded values when the measurement is repeated a number of times under the same conditions.

Proof pressure test means a pressure test by interior pressurization without the determination of a cylinder's expansion. A gas (*e.g.,* air) or a liquid (*e.g.,* water) is used as a means to achieve interior pressurization.

* * * * *

Reference gauge means a pressure indicating device that is used in the daily verification of a proof test system, and has an inherent accuracy equal to or better than the requirement for the device to be checked.

* * * * *

Service pressure means the rated service pressure marked on the cylinder.

Test pressure means the minimum prescribed pressure required for the requalification of a cylinder.

* * * * *

■ 45. In § 180.205:

■ a. Revise paragraphs (c) introductory text, (d), (g)(3), (h)(3), (i)(1)(viii), (i)(2), and (i)(3); and

■ b. Add paragraphs (f)(5), (f)(6), (i)(1)(ix), (i)(1)(x), (i)(1)(xi) and (j).

The additions and revisions read as follows:

§ 180.205 General requirements for requalification of specification cylinders.

* * * * *

(c) *Periodic requalification of cylinders.* Each cylinder bearing a DOT-specification marking must be requalified and marked as specified in the Requalification Table in this subpart. Each cylinder bearing a DOT special permit (or exemption) number must be requalified and marked in conformance with this section and the terms of the applicable special permit (or exemption). No cylinder may be filled with a hazardous material and offered for transportation in commerce unless that cylinder has been successfully requalified and marked in conformance with this subpart. A cylinder may be requalified at any time during or before the month and year that the requalification is due. However, a cylinder filled before the requalification becomes due may remain in service until it is emptied. A cylinder with a specified service life may not be refilled and offered for transportation after its authorized service life has expired.

* * * * *

(d) *Conditions requiring test and inspection of cylinders.* Without regard to any other periodic requalification requirements, a cylinder must be tested and inspected in accordance with this section prior to further use if—

(1) The cylinder shows evidence of dents, corrosion, cracked or abraded areas, leakage, or any other condition that might render it unsafe for use in transportation;

(2) The cylinder has been in an accident and has been damaged to an extent that may adversely affect its lading retention capability;

(3) The cylinder shows evidence of or is known to have thermal damage, or have been over-heated;

(4) Except as provided in § 180.212 of this subpart, the cylinder shows evidence of grinding; or

(5) The Associate Administrator determines that the cylinder may be in an unsafe condition.

* * * * *

(f) * * *

(5) Shot blasting of cylinders is permitted. Grinding, sanding, or any other removal of wall thickness of a cylinder is not permitted, except by an authorized facility, as provided in § 180.212 of this subpart for the removal of surface corrosion.

(6) Chasing of cylinder threads to clean them is permitted, but removal of metal must not occur. Re-tapping of cylinder threads is not permitted, except by the original manufacturer, as provided in § 180.212 of this subpart.

(g) * * *

(3) Each day before retesting, the retester shall confirm, by using a calibrated cylinder or other method authorized in writing by the Associate Administrator, that:

(i) The pressure-indicating device (PID), as part of the retest equipment, is accurate within ±1.0% of the prescribed test pressure of any cylinder tested that day. The PID must meet Industrial Class 1 (±1.0% deviation from the end value) with a scale appropriate to the test pressure of the cylinder. The accuracy of the PID within the test system can be demonstrated at any point within 500 psig of the actual test pressure for test pressures at or above 3,000 psig, or 10% of the actual test pressure for test pressures below 3,000 psig.

(ii) The expansion-indicating device (EID), as part of the retest equipment, gives a stable reading of expansion and is accurate to ±1.0% of the total expansion of any cylinder tested or 0.1 cc, whichever is larger. The EID must be accurate (±1.0% deviation from the end value) of its full scale. The weigh scales must be capable of providing total expansion measurements to an accuracy of ±1.0% or 0.05 ounce (1.5 g), whichever is greater.

* * * * *

(h) * * *

(3) Unless the cylinder is repaired or rebuilt in conformance with requirements in § 180.211of this subpart, it may not be filled with a hazardous material and offered for transportation where use of a specification packaging is required.

* * * * *

(i) * * *

(1) * * *

(viii) For an aluminum or an aluminum-lined composite special permit cylinder, the cylinder is known to have been or shows evidence of having been overheated. Arc burns must be considered evidence of overheating.

(ix) The cylinder is known to have been or shows evidence of having been over-pressurized.

(x) For a cylinder with a specified service life, its authorized service life has expired.

(xi) The cylinder has been stamped on the sidewall, except as provided in part 178 of this subchapter.

(2) When a cylinder must be condemned, the requalifier must—

(i) Communicate condemnation of the cylinder as follows: (A) Stamp a series of X's over the DOT-specification number and the marked pressure or stamp ''CONDEMNED'' on the shoulder, top head, or neck using a steel stamp;

(B) For composite cylinders, securely affix to the cylinder a label with the word ''CONDEMNED'' overcoated with epoxy near, but not obscuring, the original cylinder manufacturer's label; or

(C) As an alternative to the stamping or labeling as described in this paragraph (i)(2), at the direction of the owner, the requalifier may render the cylinder incapable of holding pressure; and

(ii) Notify the cylinder owner, in writing, that the cylinder is condemned and may not be filled with hazardous material and offered for transportation in commerce where use of a specification packaging is required.

(3) No person may remove, obliterate, or alter the required condemnation communication of paragraph (i)(2) of this section.

(j) *Training materials.* Training materials (such as CGA C–1.1; see § 171.7, Table I of this subchapter) may be used for training persons who requalify cylinders using the volumetric expansion test method.

■ 46. In § 180.207, revise paragraphs (a)(3), (b)(2), (c) introductory text, (d) introductory text, (d)(1), and (d)(3) to read as follows:

§ 180.207 Requirements for requalification of UN pressure receptacles.

(a) * * *

(3) A pressure receptacle with a specified service life may not be requalified after its authorized service life has expired, but must be condemned in accordance with § 180.205(i)(x) of this subpart.

(b) * * *

(2) Each pressure receptacle that fails requalification must be condemned in conformance with § 180.205(i) of this subpart or the applicable ISO requalification standard.

* * * * *

(c) *Requalification interval.* Each UN pressure receptacle that becomes due for periodic requalification must be requalified at the interval specified in the following table before it is filled:

* * *

* * * * *

(d) *Requalification procedures.* Each UN pressure receptacle must be requalified in conformance with the procedures contained in the following standards, as applicable. Furthermore, when a pressure test is performed on a UN pressure receptacle, the test must be a water jacket volumetric expansion test suitable for the determination of the cylinder expansion or a hydraulic proof pressure test. The test equipment must conform to the accuracy requirements in § 180.205(g) of this subpart. Alternative methods (*e.g.*, acoustic emission) or requalification procedures may be performed if prior approval has been obtained in writing from the Associate Administrator.

(1) *Seamless steel:* Each seamless steel UN pressure receptacle, including MEGC's pressure receptacles exceeding 150 L capacity, must be requalified in conformance with ISO 6406 (IBR, *see* § 171.7 of this subchapter). However, UN cylinders with a tensile strength greater than or equal to 950 MPa must be requalified by ultrasonic examination in conformance with ISO 6406.

* * * * *

(3) *Dissolved acetylene UN cylinders:* Each dissolved acetylene cylinder must be requalified in conformance with ISO 10462 (IBR, *see* § 171.7 of this subchapter). The porous mass and the shell must be requalified no sooner than five (5) years and no later than ten (10) years from the date of manufacture. Thereafter, subsequent requalifications of the shell must be performed at least once every ten (10) years.

* * * * *

■ 47. In § 180.209, revise paragraphs (a), (b), (c), (e), (g), (l)(1) and (m) to read as follows:

§ 180.209 Requirements for requalification of specification cylinders.

(a) *Periodic qualification of cylinders.* Each specification cylinder that becomes due for periodic requalification, as specified in the following table, must be requalified and marked in conformance with the requirements of this subpart before it is filled. Requalification records must be maintained in conformance with § 180.215 of this subpart. Table 1 follows:

TABLE 1—REQUALIFICATION OF CYLINDERS

Specification under which cylinder was made	Minimum test pressure (psig)[1]	Requalification period (years)
DOT 3	3000 psig	5.
DOT 3A, 3AA	5/3 times service pressure, except noncorrosive service (*see* § 180.209(g)).	5, or 12 (*see* § 180.209(b), (f), (h), and (j)).
DOT 3AL[2]	5/3 times service pressure	5, or 12 (*see* §§ 180.209(j) and (m)).
DOT 3AX, 3AAX	5/3 times service pressure	5
3B, 3BN	2 times service pressure (*see* § 180.209(g))	5 or 10 (*see* § 180.209(f)).
3E	Test not required.	
3HT	5/3 times service pressure	3 (*see* §§ 180.209(k) and 180.213(c)).
3T	5/3 times service pressure	5.
4AA480	2 times service pressure (*see* § 180.209(g))	5 or 10 (*see* § 180.209(h)).
4B, 4BA, 4BW, 4B–240ET	2 times service pressure, except non-corrosive service (*see* § 180.209(g)).	5, 10, or 12 (*see* § 180.209(e), (f), and (j)).
4D, 4DA, 4DS	2 times service	5.
DOT 4E	2 times service pressure, except non-corrosive (*see* § 180.209(g)).	5 or 10 ((see §§ 180.209(e)).
4L	Test not required.	
8, 8AL		10 or 20 (*see* § 180.209(i)).
Exemption or special permit cylinder	See current exemption or special permit	See current exemption or special permit.
Foreign cylinder (*see* § 173.301(j) of this subchapter for restrictions on use).	As marked on cylinder, but not less than 5/3 of any service or working pressure marking.	5 (*see* §§ 180.209(l) and 180.213(d)(2)).

[1] For cylinders not marked with a service pressure, see § 173.301a(b) of this subchapter.

[2] For special permit (or exemption) aluminum cylinders marked DOT 3AL, see § 173.23(c) of this subchapter.

(b) *DOT 3A or 3AA cylinders.* (1) A cylinder conforming to specification DOT 3A or 3AA with a water capacity of 56.7 kg (125 pounds) or less may be marked with a star and requalified every 10 years instead of every 5 years, provided the cylinder conforms to all of the following conditions:

(i) The cylinder is used exclusively for air; argon; cyclopropane; ethylene; helium; hydrogen; krypton; neon; nitrogen; nitrous oxide; oxygen; sulfur hexafluoride; xenon; chlorinated hydrocarbons, fluorinated hydrocarbons, liquefied hydrocarbons, and mixtures thereof that are commercially free from corroding components; permitted mixtures of these gases (*see* § 173.301(d) of this subchapter); and permitted mixtures of these gases with up to 30 percent by volume of carbon dioxide, provided the gas has a moisture content less than 55 ppm.

(ii) The cylinder is not used in any cascade, bank, group, rack or vehicle. The cylinder is not used in self-contained underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), or in an emergency respirator.

(iii) The permanent expansion does not exceed 5 percent of the total expansion.

(iv) The results of the hydrostatic test meet one of the following requirements:

(A) The elastic expansion does not exceed the manufacturer's marked rejection elastic expansion (REE) limit on the cylinder;

(B) The elastic expansion does not exceed the applicable rejection limit tabulated in CGA C–5 (IBR, *see* § 171.7 of this subchapter); or

(C) Either the average wall stress or the maximum wall stress does not exceed the corresponding wall stress limitation determined by computing the REE limit in conformance with CGA C–5.

(v) The cylinder is dried immediately after hydrostatic testing to remove all traces of water.

(vi) The cylinder is stamped with a five-pointed star at least one-fourth of an inch high immediately following the test date to indicate compliance with this paragraph (b)(1).

(2) If a cylinder has not been used exclusively for the gases specifically identified in paragraph (b)(1)(i) of this section, but currently conforms with all other provisions of paragraph (b)(1) of this section, it may be requalified every 10 years instead of every 5 years, only after the cylinder has been retested, marked, and placed into exclusive use and gas service in compliance with paragraph (b)(1) of this section.

(3) If, at any time, a cylinder marked with a five-pointed star is used in a manner other than as specified in paragraph (b)(1) of this section, the star following the most recent test date must be obliterated. The cylinder must be requalified within five years from the

marked test date, or if the required five-year requalification period has passed, the cylinder must be requalified prior to the first filling with a compressed gas.

(c) *DOT 4-series cylinders.* A DOT 4-series cylinder, except a 4L cylinder, that at any time shows evidence of a leak, internal or external corrosion, denting, bulging or rough usage to the extent that it is likely to be weakened appreciably, or that has lost 5 percent or more of its official tare weight must be requalified before being refilled and offered for transportation. [Refer to CGA C–6 or C–6.3 (IBR, *see* § 171.7 of this subchapter), as applicable, regarding cylinder weakening.] After testing, the actual tare weight must be recorded as the new tare weight on the test report and marked on the cylinder. The previous tare weight must be strike-lined through, but not obliterated.

* * * * *

(e) *Proof pressure test.* A cylinder made in conformance with DOT Specifications 4B, 4BA, 4BW, or 4E protected externally by a suitable corrosion-resistant coating and used exclusively for non-corrosive gas that is commercially free from corroding components may be requalified by volumetric expansion testing or proof pressure testing every 10 years instead of every 5 years. However, a cylinder used for reclaiming, recycling, or recovering refrigerant gases must be requalified by volumetric expansion testing every 5 years. Reclaimed, recycled, or recovered refrigerant gases are considered to be corrosive due to contamination. When subjected to a proof pressure test, as prescribed in CGA C–1 (IBR, see § 171.7 of this subchapter) and consistent with the applicable specification testing requirement in Part 178 of this subchapter, the cylinder must be carefully examined under test pressure and removed from service if a leak or defect is found.

* * * * *

(g) *Visual inspections.* A cylinder conforming to a specification listed in the table in this paragraph and used exclusively in the service indicated may, instead of a periodic hydrostatic test, be given a complete external visual inspection at the time periodic requalification becomes due. External visual inspection must be in conformance with CGA C–6 or C–6.3, as applicable (IBR, *see* § 171.7 of this subchapter). When this inspection is used instead of hydrostatic testing, subsequent inspections are required at five-year intervals after the first inspection. Inspections must be made only by persons holding a current RIN and the results recorded and maintained in conformance with § 180.215 of this subpart. Records must include: date of inspection (month and year); DOT-specification number; cylinder identification (registered symbol and serial number, date of manufacture, and owner); type of cylinder protective coating (including statement as to need of refinishing or recoating); conditions checked (*e.g.*, leakage, corrosion, gouges, dents or digs in shell or heads, broken or damaged footring or protective ring or fire damage); and disposition of cylinder (returned to service, returned to cylinder manufacturer for repairs or condemned). A cylinder passing requalification by the external visual inspection must be marked in conformance with § 180.213 of this subpart. Specification cylinders must be in exclusive service as shown in the following table:

Cylinders conforming to—	Used exclusively for—
DOT 3A, DOT 3AA, DOT 3A480X, DOT 4AA480	Anhydrous ammonia of at least 99.95% purity.
DOT 3A, DOT 3AA, DOT 3A480X, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW.	Butadiene, inhibited, that is commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3A480X, DOT 3B, DOT 4AA480, DOT 4B, DOT 4BA, DOT 4BW.	Cyclopropane that is commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3A480X, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Chlorinated hydrocarbons and mixtures thereof that are commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3A480X, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Fluorinated hydrocarbons and mixtures thereof that are commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3A480X, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Liquefied hydrocarbon gas that is commercially free of corroding components.
DOT 3A, DOT 3AA, DOT 3A480X, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Liquefied petroleum gas that meets the detail requirements limits in Table 1 of ASTM 1835, Standard Specification for Liquefied Petroleum (LP) Gases or an equivalent standard containing the same limits.
DOT 3A, DOT 3AA, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E	Methylacetylene-propadiene, stabilized, that is commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E	Methylacetylene-propadiene, stabilized, that is commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E	Propylene that is commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW	Anhydrous mono, ditrimethylamines that are commercially free from corroding components.
DOT 4B240, DOT 4BW240	Ethyleneimine, stabilized.
DOT 4BW	Alkali metal alloys, liquid, n.o.s., Alkali metal dispersions or Alkaline earth metal dispersions, Potassium, Potassium Sodium alloys and Sodium that are commercially free of corroding components.

* * * * *

(j) *Cylinder used as a fire extinguisher.* Only a DOT-specification cylinder used as a fire extinguisher in conformance with § 173.309(a) of this subchapter may be requalified in conformance with this paragraph (j).

(1) A DOT 4B, 4BA, 4B240ET or 4BW cylinder used as a fire extinguisher may be tested as follows:

(i) For a cylinder with a water capacity of 5.44 kg (12 pounds) or less, by the water-jacket, direct expansion or proof pressure test methods as prescribed in CGA C–1 (IBR, see § 171.7 of this subchapter). A requalification must be performed by the end of 12 years after the original test date and at 12-year intervals thereafter.

(ii) The testing procedures, calibration of the testing equipment, accuracy of the pressure indicating device, accuracy of the testing equipment must be as prescribed in CGA C–1.

(iii) Each cylinder must be tested to a minimum of two (2) times service pressure.

(iv) When testing using the water-jacket or direct expansion test method, the minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(v) The permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(vi) When testing using the proof pressure test method, the minimum test pressure must be maintained for a specific time frame as prescribed in CGA C–1. Any internal pressure applied prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(vii) When subjected to a proof pressure test, the cylinder must be carefully examined under test pressure and removed from service if a leak or defect is found.

(2) For a cylinder having a water capacity over 5.44 kg (12 pounds), by the water-jacket, direct expansion or proof pressure test methods as prescribed in CGA C–1. For the water-jacket or direct expansion test, the requalification must be performed by the end of 12 years after the original test date and at 12-year intervals theafter. For the proof-pressure test, a requalification must be performed by the end of 12 years after the original test date and at seven (7) year intervals.

(ii) The testing procedures, calibration of the testing equipment, accuracy of the pressure indicating device, and accuracy of the testing equipment must be as prescribed in CGA C–1.

(iii) Each cylinder must be tested to a minimum of two (2) times service pressure.

(iv) When testing using the water-jacket or direct expansion test method, the minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(v) The permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure. For DOT 4E cylinders, the permanent volumetric expansion may not exceed 12 percent of total volumetric expansion at test pressure.

(vi) When testing using the proof pressure test method, the minimum test pressure must be maintained for a specific timeframe as prescribed in CGA C–1 (IBR, see § 171.7 of this subchapter). Any internal pressure applied prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(vii) When subjected to a proof pressure test, the cylinder must be carefully examined under test pressure and removed from service if a leak or defect is found.

(3) A DOT 3A, 3AA, or 3AL cylinder must be requalified by:

(i) The water-jacket or direct expansion method. A requalification must be performed 12 years after the original test date and at 12-year intervals thereafter.

(ii) The testing procedures, calibration of the testing equipment, accuracy of the pressure indicating device, accuracy of the testing equipment must be as prescribed in CGA C–1.

(iii) Each cylinder must be tested to a minimum of $\frac{5}{3}$ times service pressure.

(iv) When testing using the water-jacket or direct expansion test method, the minimum test pressure must be maintained at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied prior to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus or operator error, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psig, whichever is lower.

(v) The permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure. For DOT 4E cylinders, the permanent volumetric expansion may not exceed 12 percent of total volumetric expansion at test pressure.

* * * * *

(l) * * *

(1) It has been inspected, tested and marked in conformance with the procedures and requirements of this subpart or the Associate Administrator has authorized the filling company to fill foreign cylinders under an alternative method of qualification; and

* * * * *

(m) *DOT–3AL cylinders manufactured of 6351–T6 aluminum alloy.* In addition to the periodic requalification and marking described in § 180.205 of this subpart, each cylinder manufactured of aluminum alloy 6351–T6 with a marked service pressure equal to or exceeding 1,800 psi must be requalified and inspected for sustained load cracking in conformance with the non-destructive examination method described in the following table. A cylinder with cracks must be condemned in conformance with § 180.205(i) of this subpart.

REQUALIFICATION AND INSPECTION OF DOT–3AL CYLINDERS MADE OF ALUMINUM ALLOY 6351–T6

Requalification requirement	Examination procedure [1]	Sustained Load Cracking Condemnation Criteria [2]	Requalification period (years)
Eddy current examination combined with visual inspection.	Eddy current—In conformance with appendix C of this part. Visual inspection—In conformance with CGA C–6.1 (IBR; *see* § 171.7 of this subchapter).	Any crack in the neck of 2 thread lengths or more.	5

[1] The requalifier performing eddy current must be familiar with the eddy current equipment and must standardize (calibrate) the system in accordance with the requirements provided in appendix C to this part.

[2] The eddy current must be applied from the inside of the cylinder's neck to detect any sustained load cracking that has expanded into the neck threads.

(1) *Examination procedure.* Each facility performing eddy current examination with visual inspection must develop, update, and maintain a written examination procedure applicable to the test equipment it uses to perform eddy current examinations.

(2) *Visual examinations.* Visual examinations of the neck and shoulder area of the cylinder must be conducted in conformance with CGA C–6.1 (IBR, *see* § 171.7 of this subchapter).

(3) *Condemnation criteria.* A cylinder must be condemned if the eddy current examination combined with visual examination reveals any crack in the neck of two thread lengths or more, or if visual inspection reveals any crack in the neck or shoulder area.

■ 48. In § 180.211, revise paragraphs (c) and (e)(1) to read as follows:

§ 180.211 Repair, rebuilding and reheat treatment of DOT–4 series specification cylinders.

* * * * *

(c) *Additional requirements for the repair or recondition of a DOT–4L cylinder.* (1) Repairs to a DOT–4L welded insulated cylinder must be performed in conformance with paragraphs (a) and (b) of this section with the exception that other welding procedures permitted by CGA C–3 (IBR, *see* § 171.7 of this subchapter), and not excluded by the definition of ''rebuild,'' are authorized. DOT 4L cylinders must meet additional requirements for repair specified in § 180.211(c), including being pressure-tested in conformance with the specifications under which the cylinder was originally manufactured. DOT 4L cylinders that undergo procedures not defined as a repair in § 180.203 are not subject to the requirements of § 180.211(c), including the requirement to be pressure-tested in conformance with the specifications under which the cylinder was originally manufactured.

(2) After repair, the cylinder must be—

(i) Pressure tested in accordance with the specifications under which the cylinder was originally manufactured;

(ii) Leak tested before and after assembly of the insulation jacket using a mass spectrometer detection system; and

(iii) Tested for heat conductivity requirements.

(3) Reconditioning of a DOT 4L welded insulated cylinder must be performed in accordance with paragraphs (a) and (b) of this section. Reconditioning applies to the work other than repair as described in paragraphs (c)(1) and (c)(2) of this section and that work is performed on parts other than the inner containment vessel (cylinder). Work to recondition a DOT 4L welded insulated cylinder includes the following:

(i) The removal of either end of the insulation jacket.

(ii) The replacement of the neck tube. At least a 13 mm (0.51 inch) piece of the original neck tube must be protruding above the cylinder's top end. The original weld attaching the neck tube to the cylinder must be sound, and the replacement neck tube must be welded to this remaining piece of the original neck tube.

(iii) The replacement of material such as, but not limited to, the insulating material and the piping system within the insulation space with materials that are identical to those used in the original manufacture of the cylinder.

(4) After reconditioning as described in paragraph (c)(3) of this section, the welded cylinder must be:

(i) Pneumatically leak tested, to the closure point of all piping and gauging systems, to 90% of the service pressure or the relief valve set point, whichever is less;

(ii) Leak tested before and after assembly of the insulation jacket using a mass spectrometer detection system; and

(iii) Tested for heat conductivity requirements.

* * * * *

(e) * * *

(1) The rebuilding of a DOT 4L welded insulated cylinder must be performed in conformance with paragraph (d) of this section. DOT–4 series cylinders requiring rebuild (*e.g.,* when the inner vessel is compromised), as defined in § 180.203, must do so in conformance with § 180.211. DOT 4L cylinders which undergo procedures that are not defined as a rebuild in § 180.203 are not subject to the requirements of § 180.203(e). Rebuilding of a DOT–4L welded insulated cylinder also includes:

(i) Substituting or adding material in the insulation space not identical to that used in the original manufacture of that cylinder, or

(ii) Making a weld repair not to exceed 150 mm (5.9 inches) in length on the longitudinal seam of the cylinder or 300 mm (11.8 inches) in length on a circumferential weld joint of the cylinder.

* * * * *

■ 49. In § 180.212, add paragraph (a)(3) to read as follows:

§ 180.212 Repair of seamless DOT 3-series specification cylinders and seamless UN pressure receptacles.

(a) * * *

(3) If grinding is performed on a DOT 3-series cylinder or a seamless UN pressure receptacle, the following conditions apply after grinding has been completed. Grinding must not be used to remove arc burns from a cylinder as such a cylinder must be condemned:

(i) Ultrasonic examination must be conducted to ensure that the wall thickness is not less than the minimum design requirement. The wall thickness must be measured in at least 3 different areas for every 10 square inches of grinding area.

(ii) The cylinder must be requalified in conformance with § 180.205 of this subpart.

(iii) The cylinder must be marked in accordance with § 180.213(f)(10) of this subpart to indicate compliance with this paragraph (a)(3).

* * * * *

■ 50. In § 180.213, revise paragraphs (c) and (d)(2), and add paragraphs (f)(10), (f)(11), and (g) to read as follows:

§ 180.213 Requalification markings.

* * * * *

(c) *Requalification marking method.* (1) The depth of requalification markings may not be greater than specified in the applicable specification. The markings must be made by stamping, engraving, scribing or other method that produces a legible, durable mark.

(i) Requalification marks must begin at the top of the space provided, immediately to the right of the original manufacture date of the cylinder, as space allows. Subsequent retest dates must go immediately below the previous date, continuing down in sequential order to the bottom of the shoulder or area provided for marking. Retest marks must proceed further in columns to the right of the last column markings.

(ii) Except as provided in part 178 of this subchapter, stamping on the sidewall is prohibited.

(2) A cylinder used as a fire extinguisher (§ 180.209(j) of this subpart) may be marked by using a pressure sensitive label.

(3) For a DOT 3HT cylinder, when stamped, the test date and RIN must be applied by low-stress steel stamps to a depth no greater than that prescribed at the time of manufacture. Stamping on the sidewall is not authorized.

(4) For a composite cylinder, the requalification markings must be applied on a pressure sensitive label, securely affixed and overcoated with epoxy in a manner prescribed by the cylinder manufacturer, near the original manufacturer's label. Stamping of the composite surface is not authorized.

(d) * * *

(2) A cylinder subject to the requirements of § 171.23(a)(4) of this subchapter must be marked with the date and RIN in accordance with this paragraph (d) and paragraph (f)(11) of this section, or marked in accordance with the requalification authorized by the Associate Administrator in accordance with § 171.23(a)(4)(i) of this subchapter.

* * * * *

(f) * * *

(10) For designation of grinding with ultrasonic wall thickness examination, the marking is as illustrated in paragraph (d) of this section, except the "X" is replaced with the letter "R".

(11) For designation of requalification of a foreign cylinder requalified in conformance with §§ 171.23(a)(4) and 180.209(l) of this subchapter, the marking is as illustrated in paragraph (d) of this section, except that the "X" is replaced with the letters "EX".

(g) *Visual inspection requalification markings.* Alternative to the marking requirements of paragraph (d) and (f)(5) of this section, each cylinder successfully passing a visual inspection only, in accordance with § 180.209(g) of this subpart, may be marked with the visual inspection number (*e.g.,* V123456) issued to a person performing visual inspections. An example of the manner in which the markings may be applied is as follows:

V123 03 14E 654 0314 E V123456	V123456 0314 E V123456 0314E

Where:

"03" is the month of requalification (the additional numeral "0" is optional")

"V123456" is the RIN

"14" is the year of requalification; and

"E" to indicate visual inspection

■ 51. In § 180.215, revise paragraph (b) and (c)(2)(vii), and add (c)(3) to read as follows:

§ 180.215 Reporting and record retention requirements.

* * * * *

(b) *Requalification records.* Daily records of visual inspection, pressure test, eddy current examination if required, and ultrasonic examination if permitted under a special permit, as applicable, must be maintained by the person who performs the requalification until either the expiration of the requalification period or until the cylinder is again requalified, whichever occurs first. A single date may be used for each test sheet, provided each test on the sheet was conducted on that date. Ditto marks or a solid vertical line may be used to indicate repetition of the preceding entry for the following entries only: date; actual dimensions; manufacturer's name or symbol, if present; owner's name or symbol, if present; and test operator. Blank spaces may not be used to indicate repetition of a prior entry. A symbol may be used for the actual dimensions if there is a reference chart available at the facility that lists the actual dimensions of every symbol used. The records must include the following information:

(1) *Calibration test records.* For each test to demonstrate calibration, the date; serial number of the calibrated cylinder; calibration test pressure; total, elastic and permanent expansions; and legible identification of test operator. The test operator must be able to demonstrate that the results of the daily calibration verification correspond to the hydrostatic tests performed on that day. The daily verification of calibration(s) may be recorded on the same sheets as, and with, test records for that date, or may be recorded on a separate sheet.

(2) *Pressure test and visual inspection records.* The date of requalification; serial number; DOT-specification or special permit number; marked pressure; actual dimensions; manufacturer's name or symbol, if present; date of manufacture; owner's name or symbol, if present; gas service; result of visual inspection; actual test pressure; total, elastic and permanent expansions; percent permanent expansion; disposition, with reason for any repeated test, rejection or condemnation; and legible identification of test operator. For each cylinder marked pursuant to § 173.302a(b)(5) of this subchapter, the test sheet must indicate the method by which any average or maximum wall stress was computed. Records must be kept for all completed, as well as unsuccessful tests. The entry for a repeated test must indicate the date of the earlier test, if conducted on a different day.

(3) *Wall stress.* Calculations of average and maximum wall stress pursuant to §§ 173.302a(b)(3) and 180.209(b)(1) of this subchapter, if performed.

(4) *Calibration certificates.* The most recent certificate of calibration must be maintained for each calibrated cylinder, pressure indicating device, and expansion indicating device.

(5) *Eddy current examination records.* (i) Records of eddy current inspection equipment must contain the following information:

(A) Equipment manufacturer, model number, and serial number.

(B) Probe description and unique identification (*e.g.,* serial number, part number, etc.).

(C) Specification of each standard reference ring used to perform the eddy current examination.

(ii) Eddy current examination records must contain the following information:

(A) DOT-specification or special permit number of the cylinder; manufacturer's name or symbol; owner's name or symbol, if present; serial number, and date of manufacture.

(B) Identification of each standard reference ring used to perform the eddy current examination.

(C) Name of test operator performing the eddy current examination.

(D) Date of eddy current examination.

(E) Acceptance/condemnation results (*e.g.,* pass or fail).

(F) Retester identification number.

(c) * * *

(2) * * *

(vii) Results of a test on a cylinder, including test method, test pressure, total expansion, permanent expansion, elastic expansion, percent permanent expansion (permanent expansion may not exceed ten percent (10 percent) of total expansion), and volumetric capacity (volumetric capacity of a rebuilt cylinder must be within ±3 percent of the calculated capacity);

* * * * *

(3) A record of grinding and ultrasonic examination in conformance with § 180.212(a)(3) of this subpart must be completed for each cylinder on which grinding is performed. The record must be clear, legible, and contain the following information:

(i) Name and address of the test facility, date of test report, and name or original manufacturer;

(ii) Marks stamped on cylinder to include specification number, service pressure, serial number, symbol of manufacturer, and date of manufacture;

(iii) Cylinder outside diameter and length in inches;

(iv) Detailed map of where the grinding was performed on the cylinder; and

(v) Wall thickness measurements in grind area in conformance with § 180.212(a)(3)(i).

* * * * *

■ 52. In appendix C to part 180, the heading and paragraph 1 are revised to read as follows:

APPENDIX C TO PART 180—EDDY CURRENT EQUIPMENT REQUIREMENTS FOR INSPECTION OF DOT 3AL CYLINDERS MANUFACTURED OF ALUMINUM ALLOY 6351–T6

1. *Equipment calibration*. Each facility performing an eddy current examination must develop, update, and maintain a written calibration procedure applicable to the test equipment it uses to perform eddy current examinations.

* * * * *

Issued in Washington, DC on July 11, 2016, under authority delegated in 49 CFR 1.97.

William Schoonover,

Acting Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–16689 Filed 7–25–16; 8:45 am]

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Part IV

Federal Communications Commission

47 CFR Parts 1, 2, and 96
Amendment of the Commission's Rules With Regard to Commercial Operations in the 3550–3650 MHz Band; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 96

[WT Docket No. 12–354; FCC 16–55]

Amendment of the Commission's Rules With Regard to Commercial Operations in the 3550–3650 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Federal Communications Commission addresses eight petitions for reconsideration on certain rules adopted in the *Report and Order* (*Report and Order*) in this proceeding governing the Citizens Broadband Radio Service in the 3.5 GHz band. The Commission also finalizes the regulatory scheme established in the *Report and Order* to make this spectrum available for wireless broadband through dynamic sharing among three tiers of users.

DATES: Effective August 25, 2016 except for §§ 1.9046, 96.3, 96.17(b), 96.25(c)(1)(i), and 96.32(a) and (b) which contain information collection requirements subject to approval by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Paul Powell, *Paul.Powell@fcc.gov*, of the Wireless Telecommunications Bureau, Mobility Division, (202) 418–1618. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918 or send an email to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration and Second Report and Order in GN Docket No. 12–354, FCC 16–55 released on May 2, 2106. The complete text of the public notice is available for viewing via the Commission's ECFS Web site by entering the docket number, WT Docket No. 12–354. The complete text of the public notice is also available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563.

The Commission will send a copy of this Order on Reconsideration and Second Report & Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

I. Introduction and Executive Summary

1. In this *Report and Order and Order on Reconsideration* (*Second Order*) we finalize the rules governing the innovative Citizens Broadband Radio Service in the 3550–3700 MHz band (3.5 GHz Band). Facing ever-increasing demands of wireless innovation and constrained availability of clear sources of spectrum, the Citizens Broadband Radio Service is an opportunity to add much-needed capacity through innovative sharing. With this *Second Order,* we finalize the regulatory scheme we created in 2015, putting in place the last rules necessary for this service to become commercially available. (80 FR 36163, June 23, 2015)

2. The Citizens Broadband Radio Service takes advantage of advances in technology and spectrum policy to dissolve age-old regulatory divisions between commercial and federal users, exclusive and non-exclusive authorizations, and private and carrier networks. The regulatory framework takes from recommendations from the President's Council of Advisors on Science and Technology (PCAST) and substantial engagement and input from stakeholders representing a cross section of the communications, technology, and public interest realms.

3. The comprehensive regulatory scheme adopted in the *3.5 GHz R&O* included specific licensing, technical, and service rules to enable dynamic sharing between three tiers of users in the 3.5 GHz Band. The Spectrum Access System (SAS) is the advanced frequency coordinator (or coordinators) necessary to assign rights and maximize efficiency in the band. The SAS(s) will incorporate information from the Environmental Sensing Capability (ESC), which will be used to increase available spectrum in coastal areas while continuing to protect incumbent Department of Defense (DoD) radar systems.

4. In this *Second Order,* we reaffirm the regulatory approach adopted in the *3.5 GHz R&O.* In doing so, we deny several petitions for reconsideration that are inconsistent with our goals and grant others that advocated rule modifications that would facilitate more equitable and efficient use of the 3.5 GHz Band. In the *3.5 GHz R&O,* we developed a comprehensive approach intended to balance consideration of the complex issues and competing considerations involved in creating a sharing regime in this band, and each rule is a vital part of that approach. We reaffirm our commitment to add much needed capacity spectrum to the marketplace through innovative sharing rules and techniques, and believe the rules established in the *3.5 GHz R&O* are the best means to do so.

5. Nonetheless, we do agree with some petitioners who argue for an increase in the power level for non-rural Category B CBSDs and greater flexibility in how to measure and direct the power. This will provide additional flexibility for all CBSD deployments to potentially increase their utility, and create additional flexibility for non-rural deployments. While rejecting arguments both to increase and to decrease our out-of-band emission (OOBE) limits for CBSDs, we revise our measurement of such limits to conform to the well-established root mean square (RMS) measurement technique reflected in our rules for other services. We also adopt a limited exception to the PAL assignment rules that would allow a single PAL to be issued in License Areas located in Rural Areas in the absence of mutually exclusive applications. At SIA's request, we also revise our rules to make clear that SASs must be capable of receiving and responding to interference complaints from Fixed Satellite Service (FSS) earth station licensees.

6. While we created a robust and substantial regulatory framework in the *3.5 GHz R&O,* there were several technical issues that required further refinement and input on the record. To bolster the record on these issues, we released a *Second FNPRM* seeking comment on how to: (1) Define "use" of Priority Access License (PAL) areas to determine the availability of spectrum for General Authorized Access (GAA) use; (2) implement and promote a robust secondary market in the band; and (3) optimize protections for licensed in-band and out-of-band FSS earth stations.

7. These are important issues, and are fundamental to the fabric of the Citizens Broadband Radio Service. They explore how to maximize the efficient use of spectrum by allowing opportunistic GAA use of spectrum when and where it is not utilized by Priority Access Licensees. They look at how we can maximize the amount of spectrum available in the band by optimizing the protection of in-band and out-of-band FSS earth stations, while leveraging the SAS and other tools to maximize operations towards the 3700 MHz band edge. They examine how to create reliable and flexible secondary market rules that can be implemented across hundreds of thousands of licenses.

8. In resolving these final issues, we strive to establish simple rules that are implementable in the near term, while protecting DoD radar systems consistent with the process and procedures established in the *3.5 GHz R&O.* We establish a definition of use that allows Priority Access Licensees to certify the extent of their service area to an SAS, while also establishing a maximum point at which they will receive protection. This is a both a flexible and objective way to allow Priority Access Licensees to design and deploy networks, and SAS Administrators to provide objective protection and effective GAA access. We authorize "light-touch leasing" to allow Priority Access Licensees to leverage the secondary market to provide access to any qualified lessee with minimal administrative requirements or transaction costs. Finally, we establish protection criteria for in-band FSS, and out-of-band FSS sites used for telemetry, command, and control (TT&C) that provides a high level of reliability, while also allowing the SASs to optimize based on the characteristics of the FSS earth station, the terrain, the CBSD deployment characteristics near the site, and other factors.

9. With these decisions, we complete the regulatory framework for the Citizens Broadband Radio Service, and set the stage for the commercial availability of a contiguous 150 megahertz of spectrum for wireless broadband use.

II. Procedural Background

A. 3.5 GHz NPRM, Licensing Public Notice, and FNPRM

10. As part of its ongoing efforts to address the growing demand for fixed and mobile broadband capacity, the Federal Communications Commission (FCC or Commission) released a *Notice of Proposed Rulemaking* (78 FR 1188, January 8, 2013) in December 2012 proposing to make an additional 100 megahertz (or up to 150 megahertz under a supplemental proposal) of spectrum available for shared wireless broadband use. Specifically, the *NPRM* proposed to create a new Citizens Broadband Radio Service. The technical rules focused on the use of low-powered small cells to drive increases in broadband capacity and spectrum reuse and an SAS that would coordinate multiple tiers of users.

11. In November 2013, in response to comments received on the record up to that point, the Commission released the *Licensing PN* (78 FR 73794, December 9, 2013), which described a Revised Framework that elaborated upon some of the licensing concepts and alternatives set forth in the *NPRM.* The Revised Framework retained the three-tier model proposed in the *NPRM* but expanded eligibility for access to the Priority Access tier with competitive bidding for assigning licenses within that tier. Like the *NPRM's* main proposal, the Revised Framework cited the unique capabilities of small cell and SAS technologies to enable sharing among users in the Priority Access and GAA tiers.

12. In April 2014, the Commission released the *3.5 GHz FNPRM* (79 FR 31247, June 2, 2014), proposing specific rules for a new Citizens Broadband Radio Service in the 3.5 GHz Band to be codified in a new proposed part 96. The *FNPRM* built upon the concepts and proposals set forth in the NPRM and the *Licensing PN* and reflected the extensive record generated in the proceeding. Notably, the *3.5 GHz FNPRM* proposed to: (1) Implement the three-tier authorization model proposed in the NPRM; (2) establish Exclusion Zones based on recommendations set forth in the Fast Track Report to ensure compatibility between incumbent federal operations and Citizens Broadband Radio Service users; (3) create an open eligibility authorization system for Priority Access and GAA operations; (4) establish granular, exclusive spectrum rights for the Priority Access tier, consistent with parameters discussed in the *Licensing PN;* (5) set a defined "floor" for GAA spectrum availability, to ensure that GAA access is available nationwide (subject to Incumbent Access tier use); (6) set guidelines to allow contained access users to request up to 20 megahertz of reserved frequencies from the GAA pool for use within their facilities; (7) establish baseline technical rules for fixed or nomadic base stations operating in the 3.5 GHz Band; and (8) set guidelines for the operation and certification of SASs in the band. The *FNPRM* also sought comment on: (1) Protection criteria for Incumbent Access users; (2) potential protection of FSS earth stations in the 3700–4200 MHz band (C-Band); (3) competitive bidding procedures for resolving mutually exclusive applications for Priority Access Licenses (PALs); and (4) the possible extension of the proposed rules to include the 3650–3700 MHz band.

B. Report and Order and Second Further Notice of Proposed Rulemaking

13. On April 17, 2015, the Commission released the *3.5 GHz R&O,* which established the Citizens Broadband Radio Service under a new part 96 of the Commission's rules. The *3.5 GHz R&O* established a three-tier framework for making the entirety of the 3.5 GHz Band available for shared commercial use utilizing an SAS to coordinate operations between and among users in different tiers. This three-tier sharing framework is largely consistent with the proposals put forth in the *FNPRM.*

14. Incumbent Access users represent the highest tier in this framework and receive interference protection from all Citizens Broadband Radio Service users. Protected incumbents include federal shipborne and ground-based radar operations and FSS earth stations in the 3600–3700 MHz band and, for a finite period, grandfathered terrestrial wireless operations in the 3650–3700 MHz portion of the band. Non-federal incumbents must register the parameters of their operations with the Commission and/or an SAS to receive protection from Citizens Broadband Radio Service users (47 CFR 96.15, 96.17, 96.21). In addition, an ESC may be used to detect transmissions from DoD radar systems and transmit that information to an SAS to ensure that federal Incumbent Users are protected from interference (47 CFR 96.15, 96.67).

15. The Citizens Broadband Radio Service itself consists of two tiers—Priority Access and GAA—both assigned in any given location and frequency by an SAS. Priority Access operations receive protection from GAA operations. A PAL is defined as a non-renewable authorization to use a 10 megahertz channel in a single census tract for three years. PALs will be assigned via competitive bidding in up to 70 megahertz of the 3550–3650 MHz portion of the band. One Priority Access Licensee may hold up to forty megahertz of PALs in any given census tract at any given time (47 CFR 96.25, 96.29).

16. GAA use will be licensed by rule throughout the 150 megahertz band. Both Priority Access and GAA use will be assigned and coordinated by an SAS, which will also perform additional coordination functions as set forth in the rules. GAA users will be permitted to operate on any frequencies not assigned to PALs. GAA users will receive no interference protection from other Citizens Broadband Radio Service users, including other GAA users, and must not interfere with higher tier operations.

17. The *Second FNPRM,* which was released along with the *3.5 GHz R&O,* sought comment on how to define "use" by Priority Access Licensees and whether the Commission should rely on an engineering definition, an economic definition, or a hybrid of the two to

determine whether frequencies are in use. The *Second FNPRM* also sought comment on the applicability of existing secondary market rules to PALs and the appropriate administration of secondary market transactions in the band. Finally, the *Second FNPRM* a sought comment on the methodology and parameters for protecting in-band and C-Band FSS earth stations.

18. After the adoption of the *3.5 GHz R&O,* and as directed therein, on October 23, 2015, the Wireless Telecommunications Bureau (WTB) released a Public Notice (80 FR 69662, November 10, 2015) seeking comment on the appropriate methodology for determining the contours for protecting existing 3650–3700 MHz wireless broadband licensees from Citizens Broadband Radio Service users during a fixed transition period. Finally, as directed by the Commission in the *3.5 GHz R&O,* WTB and the Office of Engineering and Technology (OET) released a Public Notice seeking proposals for future SAS Administrator(s) and ESC operator(s) in the 3.5 GHz Band. The Public Notice summarized the requirements for both SAS Administrators and ESC operators, as established in the *3.5 GHz R&O,* and described the process for submitting proposals. It also briefly described the process that WTB/OET will use to evaluate prospective SAS Administrators and ESC operators.

C. Petitions for Reconsideration

19. Petitions for Reconsideration on the *3.5 GHz R&O* were due July 23, 2015. The following eight parties filed petitions for reconsideration: CTIA, Jon Peha, Motorola Solutions, NAB, Nokia Solutions, SIA, Verizon, and WinnForum (80 FR 59705, October 2, 2015). The arguments raised in these petitions are described in greater detail in the relevant sections of the *Second Order.*

20. CTIA—The Wireless Association Petition. CTIA seeks revisions to the licensing process for PALs, arguing that the Commission should adopt a five-year license term with a renewal expectancy. CTIA asks the Commission to reconsider its decision not to award a PAL in census tracts unless there are mutually exclusive applications. CTIA also seeks change to the technical rules, including changes to the OOBE limits and the measurement procedure for such limits. Finally, CTIA requests that the Commission increase the maximum effective isotropic radiated power (EIRP) and conducted power limits for Category A and Category B CBSDs.

21. Jon Peha Petition. Jon Peha seeks reconsideration of the Commission's decision that "when there is only one applicant for one or more PALs in a given census tract, we will neither proceed to an auction nor assign any PAL for that license area." Instead he argues that the Commission should grant PALs in every market where there is demand, even if there is only one bidder.

22. Motorola Solutions Petition. Motorola Solutions supports WinnForum's Petition and also seeks reconsideration of the Commission's decision to only issue PALs where two or more parties file an application.

23. NAB Petition. NAB asks the Commission to eliminate professional installation as a method to report the geographic location of a CBSD to an SAS. NAB contends that location data should be reported automatically by a mandatory geo-location capability built into the device.

24. Nokia Solutions Petition. Nokia Solutions asks the Commission to increase the response time from when an ESC communicates it has detected a signal from a federal system in a given area that the SAS must either confirm suspension of the CBSD's operation or relocation from 60 seconds to 600 seconds. Nokia Solutions also argues that the Commission should specify emission limits for End User Devices that are compliant with 3GPP specifications. Nokia Solutions seeks changes to the power limits, asking that the total transmit power for CBSDs be stated simply as maximum EIRP and increased by 6 dB for Category A and 9 dB for Category B CBSDs. Finally, Nokia Solutions asks that the Commission revise the vertical location accuracy requirements to align with US Government Position Accuracy standard for outdoor installation and remove such requirements for indoor installations.

25. SIA Petition. SIA seeks changes to a variety of technical rules and aspects of the FSS protection rules. Among other things, SIA states that the Commission should adopt a stringent OOBE limit at 3680 MHz to protect C-Band operations immediately above the 3700 MHz band edge. SIA also argues that the Commission should: (1) Decrease the maximum power limits for CBSDs; (2) reduce the 60-second timeframe for a CBSD to confirm deactivation or a change in frequency; (3) eliminate or clarify the annual registration requirements for FSS earth stations; (4) establish procedures for reporting FSS interference to SASs and implementing immediate shutdown procedures in response to such reports; and (5) reconsider the freeze on new co-primary FSS earth stations in the band.

26. Verizon Petition. Verizon seeks reconsideration of the power limits, stating that the Commission should increase the EIRP to levels closer to real-world small cell deployments and to rely solely on EIRP rather than imposing limits on both EIRP and conducted power.

27. WinnForum Petition. The WinnForum asks the Commission to reconsider a number of the technical rules governing the 3.5 GHz Band. WinnForum argues that the Commission should: (1) Increase the reconfiguration response time from when an ESC communicates it has detected a signal from a federal system in a given area that the SAS must either confirm suspension of the CBSD's operation or relocation from 60 seconds to 600 seconds; (2) increase Category A and Category B CBSD EIRP limits and provide additional flexibility between EIRP and conducted power limits; and (3) modify the geo-location rules to allow SASs to estimate CBSD elevation above ground level for purpose of determining vertical location accuracy.

D. Oppositions and Replies to Petitions for Reconsideration

28. Oppositions to the petitions for reconsideration were due October 19, 2015, and replies to oppositions were due October 29, 2015. Eight parties filed responses. The arguments raised in these oppositions are described in greater detail in the relevant sections of the *Second Order.*

29. CTIA Opposition. CTIA opposes SIA's petition and supports the petitions filed by Jon Peha and Motorola Solutions. CTIA asks the Commission to reject SIA's request to impose stricter OOBE limits and states the 3.5 GHz FNPRM provided adequate notice that that the Commission would extend these limits for the 3650–3700 MHz band. CTIA claims the power limits for non-rural Category B CBSDs should be increased to provide operators with additional flexibility. Finally, CTIA supports Jon Peha's and Motorola Solutions' request that the Commission issue PALs in all census tracts, even if there is only one applicant.

30. Federated Wireless Opposition. Federated Wireless asks that the Commission take the following actions in response to the petitions for reconsideration: (1) Increase maximum EIRP and conducted power limits for CBSDs; (2) modify the elevation accuracy requirement to allow the SAS to play a role in determining CBSD location; and (3) allow PALs to be issued even when there is a single applicant in a given census tract. Federated Wireless also asks the

Commission to reject the petitions that seek elimination of the option to allow a professional installer to report geo-location and petitions that request adoption of a maximum antenna height limitation for Category B CBSDs.

31. Google Opposition. Google argues that the Commission should reject SIA's request to strengthen OOBE limits and eliminate registration requirements for FSS earth station operators. Google also argues that professional installation can protect incumbents and the Commission should retain this option to report geo-location accuracy and that the SAS should not be required to perform additional validation of location data. Google also supports many of the petitioners for technical amendments to the rules to maximize spectrum availability.

32. SIA Opposition. SIA asks the Commission to reject requests to relax OOBE limits and use an RMS detection methodology for measuring a device's compliance with the Commission's OOBE rules. SIA also opposes: (1) Higher EIRP limits for CBSDs; (2) unlimited antenna height for Category B CBSDs; and (3) any increase in the CBSD or SAS reconfiguration time. Finally, SIA supports elimination of the professional installation option for reporting location accuracy.

33. Qualcomm Opposition. Qualcomm supports CTIA's request to allow the use of an RMS detector to measure OOBE. Qualcomm also supports CTIA's request to relax the requirement limiting OOBE below 3530 MHz and above 3720 MHz to −40 dBm/MHz.

34. T-Mobile Opposition. T-Mobile supports increasing the license term for PALs from three years to ten years with a renewal expectancy. T-Mobile also argues that the Commission should: (1) Make the total number of PALs in a census tract for which applicants have applied available for renewal; (2) increase OOBE and EIRP limits for CBSDs and eliminate conducted power limits; and (3) increase the reconfiguration response time when an incumbent user is detected. Finally, T-Mobile asks the Commission to continue to evaluate whether geo-location capabilities can be built into devices in the future.

35. Verizon Opposition. Verizon states that the Commission should deny SIA's request for stricter OOBE limits and that SIA's concerns about FSS protections are premature. Verizon reiterates its position that allowing CBSDs to operate at higher power limits is crucial to the success of this band.

36. WISPA Opposition. WISPA argues that the Commission should retain the majority of its technical rules, including the maximum power limit, absence of height restrictions for Category B CBSDs, elevation reporting rule and the professional installation requirements. However, WISPA supports requests to relax OOBE limits and to use an RMS detector to measure these levels. WISPA opposes the petitions that request increasing the three-year license term for PALs and opposes permitting a renewal expectancy. However, WISPA supports the requests to award PALs in census tracts even if there is only one application. Finally, WISPA supports retaining the FSS earth station registration requirements.

E. Responses to Second FNPRM

37. The Commission received comment on the three outstanding issues in the *Second FNPRM* described above: (1) Defining use by PALs; (2) creating secondary markets in the 3.5 GHz Band; and (3) FSS protection criteria. These comments, and those received in subsequent rounds, are summarized and referenced in the *Second Order* below.

III. Order on Reconsideration

38. Section 1.429 of the Commission's rules establishes the standards for submission, review, and consideration of petitions for reconsideration (47 CFR 1.429). The eight petitions for reconsideration filed in this proceeding were assessed pursuant to the requirements set forth in section 1.429 (47 CFR 1.429). The arguments made by petitioners are addressed on an issue-by-issue basis below. Except as otherwise set forth below, these petitions do not raise any new issues not considered in the *3.5 GHz R&O,* or where they do, we do not find these arguments persuasive. Through this Order on Reconsideration we reaffirm our commitment to the rules and comprehensive regulatory framework established in the *3.5 GHz R&O.*

A. PAL License Terms and Renewability

39. Background. In the *3.5 GHz R&O,* the Commission adopted a three-year non-renewable license term for PALs. This represents an increase from the one-year, non-renewable term that was originally proposed in the FNPRM and on which the Commission sought comment in the *Licensing PN.* After review of the record, the Commission found that three-year, non-renewable license terms strike an appropriate balance between the public interest need for targeted, flexible licensing and the need to provide sufficient certainty for licensees to invest in the 3.5 GHz Band.

40. CTIA asks that the Commission extend PAL license terms to five years and grant an ongoing renewal expectancy, provided that the licensee has deployed services and registered with an SAS. CTIA argues that the existing three-year license term does not provide operators sufficient time or assurance to realize a return on investment. CTIA contends that many challenges associated with network deployment, such as developing and certifying equipment, obtaining appropriate zoning and permitting, and deploying infrastructure, are amplified in the 3.5 GHz Band given the novelty and complexity of higher frequency small cell deployments. Further, CTIA cites IEEE's reluctance to develop a standard to support IEEE 802.11 Wireless Local Area Networks (WLAN) for the 3.5 GHz Band as a signal that the *3.5 GHz R&O* is already affecting investment and innovation. Three parties, AT&T, PCIA, and T-Mobile, support CTIA's position.

41. WISPA filed an opposition to the CTIA Petition stating that the Commission should not revisit the carefully balanced compromise that resulted in the Commission's adoption of a three-year license term. WISPA contends that the approach adopted in the *3.5 GHz R&O* reflects a balance between the views of parties that prefer short-term licenses—including WISPA members—and those that prefer longer license terms. Further, WISPA doubts that large wireless carriers will choose not to deploy in this band. Rather, WISPA notes that, in recent years, the mobile wireless industry has embraced unlicensed deployment models and argues that the Citizens Broadband Radio Service will provide similar investment incentives for the industry.

42. CTIA filed a reply to WISPA's opposition reiterating its arguments. CTIA argues that, while WISPA's members may not need the same level of certainty that mobile operators will require, the Commission should not ignore the novelty and complexity that mobile operators will face when deploying in the 3.5 GHz Band.

43. Discussion. We deny CTIA's request and reaffirm our decision to issue PALs with three-year non-renewable license terms. We agree with WISPA that the *3.5 GHz R&O* already reflects a balance among parties that advocated for short license terms and those that prefer longer terms. We originally proposed a one-year non-renewable license term for PALs but, based on the record, we instead adopted a longer, three-year license term and allowed applicants to apply for two consecutive terms, during the first

applications window, for a total of six years. We continue to believe that "three-year non-renewable license terms—with the ability to aggregate up to six years up-front—strike a balance between some commenters' desire for flexibility with other commenters' need for certainty." We set forth several arguments in favor of these findings in the *3.5 GHz R&O* and CTIA has not provided any new information that would cause us to alter our analysis. Indeed, the arguments raised by CTIA and supporting parties are similar to those raised by commenters in response to the FNPRM. These arguments were already thoroughly considered by the Commission in the *3.5 GHz R&O.* As such, we continue to believe that three-year, non-renewable license terms strike the proper balance of interests for the 3.5 GHz Band.

44. We also continue to believe that the current rules will effectively incentivize network investment. As we found in the *3.5 GHz R&O,* the rules governing the 3.5 GHz Band work in concert to promote shared access to the band, foster innovation, and ensure that Citizens Broadband Radio Service users are able to efficiently target their use of the 3.5 GHz Band to their specific needs. Non-renewable, short-term licenses are an essential component of this overall framework. They allow operators to obtain PALs when and where Priority Access to the band is needed while permitting periodic, market-based reassignment of these rights in response to changes in local conditions and operator needs. The technical rules and band-wide operability requirement ensure that operators can easily utilize both Priority Access and GAA spectrum in their networks and seamlessly switch between tiers without purchasing additional equipment. In addition, our decision not to impose specific construction requirements for PALs further increases the flexibility and fungibility of these licenses and reduces the barriers to fluid movement between service tiers. These unique features of the Citizens Broadband Radio Service effectively negate the risk of stranded investment for operators and incentivize efficient network deployments.

45. CTIA asserts that deploying a network takes "several years," and that six years is not a sufficient time period to build a network and obtain the financial return an operator would need to justify making such investments. But CTIA offers no support for its assertion that "several years" must be more than six years to do so or that a PAL is necessary to facilitate network construction. Nor does it address our conclusion, as WISPA notes, that, even for larger carriers, the economics and upgrade cycles for small cell use may resemble those for Wi-Fi deployments rather than traditional macro cell deployments. Furthermore, PAL Licenses Areas are significantly smaller, and therefore require less network deployment, than market areas for other wireless services. Given the differences in the nature and scope of service in this shared band, we continue to believe that three-year, non-renewable PAL terms along with the opportunity to acquire two consecutive three-year licenses during the initial PAL auction reasonably balance the stated interests of different users of this shared band. This approach will promote competition, spur innovation, and encourage rapid network deployment in the 3.5 GHz Band.

B. Assignment of PALs

46. Background. The Communications Act, as amended, requires the Commission to use competitive bidding to assign licenses when "mutually exclusive applications are accepted for any initial license," subject to specified exemptions not applicable in this band (47 U.S.C. 309(j)(1)–(2), (j)(6)(E)). In the *3.5 GHz R&O,* we found that mutual exclusivity exists when multiple applicants elect to bid on more PALs than exist in a given census tract. We also found that, consistent with previous spectrum auctions, mutual exclusivity will be determined based upon the Commission's acceptance of competing applications. Because of the "generic" nature of PAL frequency assignments, when total PAL applications exceed the PAL bandwidth available in a License Area, PAL applications are mutually exclusive because granting one application would create conflict with another application.

47. Once mutual exclusivity has been established by competing accepted applications seeking to acquire more PALs than are available in a particular geographic area, the PALs in that area will be assigned by competitive bidding, without regard to the number of applicants that ultimately decide to bid or the actual number of PALs for which they place bids. Under this approach, when there are two or more applicants for PALs in a given census tract for a specific auction, we will make available one less PAL than the total number of PALs in that tract for which all applicants have applied, up to a maximum of seven.

48. CTIA, Jon Peha, and Motorola Solutions seek reconsideration of the Commission's method for determining mutual exclusivity for PALs. Federated Wireless, UTC, and WISPA support these petitions. Petitioners assert that the Commission should make PALs available even if only one applicant applies for a PAL in any given census tract and that the number of available PALs should not depend on the number requested by applicants. Petitioners claim that prospective licensees may have need for exclusive access to spectrum in the 3.5 GHz Band and those needs are not dependent on other parties. In addition, Motorola Solutions, Federated Wireless, and UTC contend that the Commission's rule would have negative effects on critical infrastructure industries that may have an interest in exclusive spectrum access. Federated Wireless, UTC, and WISPA argue that the Commission's approach to determining mutual exclusivity is likely to have a disproportionate negative effect on applicants in rural areas, where demand is likely to be sparser than in more densely populated urban and suburban areas.

49. John Peha argues that the Commission has the legal authority to auction PALs even when all applications in a given License Area are received from the same source. WISPA and Motorola solutions suggest that the Commission should set a reasonable licensing or administrative fee if a single applicant applies for a PAL in a given census tract. Federated Wireless and CTIA argue that PALs should be assigned on a non-auctioned basis when there is only one applicant in a given License Area.

50. Discussion. After review of the record, we largely affirm our decision in the *3.5 GHz R&O* and deny the petitions for reconsideration of our determination not to assign PALs in the Citizens Broadband Radio Service in geographic areas for which there is only one applicant, with one limited exception. We modify our original decision to address the limited case of applicants in Rural Areas that may exhibit lower demand than other areas. Specifically, in the absence of mutually exclusive applications, if there is a single applicant for one or more PALs in a License Area within a Rural Area, as defined in section 96.3 (47 CFR 96.3), we will allow for the assignment of one PAL in that License Area. We believe that this narrow exception is appropriate to create an opportunity for operators that provide broadband services to Rural Areas to secure assured exclusive access to spectrum, regardless of competitive demand. As described below, other than this very limited exception, we affirm our decision to issue PALs only through competitive bidding.

51. Given the unique features of this band, we concluded in the *3.5 GHz R&O* that our approach is consistent with the Commission's statutory authority and precedent, and best serves the public interest. Specifically, we found that if there is only a single applicant seeking PALs in a geographic area, and therefore no mutual exclusivity (and hence we have no auction authority), the best way to discharge our statutory mandate to "encourage the larger and more effective use of radio in the public interest" (47 U.S.C. 303(g)) is to provide access to such spectrum via shared GAA use.

52. We continue to believe that the approach adopted in the *3.5 GHz R&O* fulfills our statutory mandate because it establishes an auction process that promotes "efficient and intensive use" of this spectrum, it allows for the "development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas," and it "recover[s] for the public . . . a portion of the value of the public spectrum resource made available for commercial use" (47 U.S.C. 309(j)(3), 309(j)(4)). This is a market-based approach that targets Priority Access rights where and when there is actual market demand. None of the petitioners presented new evidence to cause us to reconsider the conclusion that this approach drives greater productivity and efficiency in spectrum use and promotes innovation and the development of the next generation of shared spectrum technologies by providing ample opportunities for both GAA and PAL operations.

53. Petitioners indicate that there may be certain types of users or applications that will require PALs for their operations, regardless of whether there are competing users filing applications in a given census tract. The fundamental benefit of a PAL is the right to exclusive use of 10 megahertz of spectrum in a given census tract. In the absence of competition for the spectrum, exclusivity is unnecessary. Further, since there is no difference in the technical rules governing GAA and Priority Access devices and users, the permissible use cases for each tier of service are the same. In the absence of multiple competing applications that exceed the supply of PALs in a geographic area, there should be ample GAA spectrum available for interested parties, thereby obviating the need for exclusive rights. To the extent that petitioners advocate for the assignment of PALs in geographic areas for which there is only one applicant because a particular PAL applicant might anticipate operations that it believes will require the interference protection that is associated with those authorizations, we decline to revise the hybrid framework we adopted in the *3.5 GHz R&O*. In balancing competing public interest objectives, as we often must, that framework was designed to select the best approach to spectrum management based on local supply and demand. Accordingly, where competitive rivalry for spectrum access is low, we determined to allow the GAA tier to provide a low-cost entry point to the band. Where rivalry for spectrum access is high, an auction will resolve mutually exclusive applications for PALs in specific geographic areas. We further adopted finite-term licensing to facilitate evolution of the band and an ever-changing mix of GAA and Priority Access bandwidth over time. As we explained in the *3.5 GHz R&O*, this regulatory adaptability should make the 3.5 GHz Band hospitable to a wide variety of users, deployment models, and business cases, including some solutions to market needs not adequately served by our conventional licensed or unlicensed rules. By adopting rules that provide for widespread GAA use of any spectrum for which we have not received mutually exclusive PAL applications, we ensure that the spectrum will be put to a use for which we have identified a clear public interest need.

54. We reject WISPA's assertion that our approach "substitutes the Commission's business judgment about shared spectrum use over an applicant's business decision that may favor exclusive spectrum use." Whether or not a business desires exclusivity is independent of whether there is a market-based need for exclusivity caused by rising demand for the spectrum. The Commission's approach does indeed promote shared spectrum use—a fundamental feature of the Citizens Broadband Radio Service since its inception—while providing for prioritized access in areas with heightened demand. In fact, the Commission's approach relies purely on market demand to both trigger an auction and allocate PALs according to that demand, consistent with long-standing Commission practices that efficiently assign spectrum licenses via auction. Any method that would allow PALs to be assigned absent competing applications would not, as WISPA suggests, ensure "a marketplace decision," but rather one likely to encourage speculation, reduce spectrum availability, and discourage innovation in the band.

55. After review of the record, we do however conclude that it would serve the public interest to allow providers in Rural Areas to have limited PAL access, even in the absence of mutually exclusive applications in that area. Petitioners assert that, in the absence of mutually exclusive PAL applications accepted for a geographic area, the approach adopted in the *3.5 GHz R&O* will have a disproportionate negative effect on rural providers, utilities, and critical infrastructure facilities. Petitioners claim that such users may have a need for the "high quality of service and interference protection that can only be afforded through acquisition of a PAL." We note that many of these entities—including utilities and rural WISPs—currently utilize the 3650–3700 MHz band (and other bands including 2.4 GHz, 5 GHz, and 900 MHz) on a non-exclusive basis without the option of acquiring priority rights. These entities should be able to provide similar services in the 3.5 GHz Band operating on a GAA basis with the added option of purchasing a PAL if and when demand from more than one party exists in a given geographic area. In addition, as described in this section and section III(A), there is no type of service that is permitted with a PAL that would not be technically allowed or viable under a GAA authorization—the only variable is the ability to exclude others from the use of the spectrum to ensure interference protection, a need which has not been fully supported in the scenario of a single PAL applicant in a geographic area.

56. However, given that demand for PALs may well be lower in less populated areas—particularly early in the Citizens Broadband Radio Service deployment cycle—some Rural Areas may not have multiple applicants for PALs. While we believe that rural service providers can and will provide a variety of robust broadband services in these areas on a GAA basis, we believe that the public interest would be served by ensuring that a PAL is available to a provider in these Rural Areas in the unlikely event that there is a single PAL applicant in a given area. Under this limited exception we will allow for one PAL in a License Area located in a Rural Area in which mutually exclusivity does not exist. If the Commission receives only one application that is acceptable for filing for a License Area located in a Rural Area, the Commission will issue a Public Notice cancelling the auction for this license and establishing a date for the filing of a long-form application, the acceptance of which would trigger the relevant procedures permitting petitions to deny. We believe that granting this limited exception to

our decision not to assign PALs in the Citizens Broadband Radio Service in License Areas for which there is only one applicant is an appropriate balance that will serve the public interest by allowing for the opportunity for a rural service provider to acquire exclusive spectrum use in a Rural Area where such access may facilitate its ability to provide innovative services to customers in more remote locations. However, recognizing the unique nature of this exception, the Commission reserves the right to review and reconsider this approach at a later date. We do not believe there is any reason to change any other aspect of the PAL licensing scheme for Rural Areas or any other use case.

57. We also note that the opportunity to purchase PALs is not a one-time event for this band. Because PALs are licensed for three-year, non-renewable terms, we will periodically open application windows for new PALs that take effect upon expiration of previously assigned PALs. Additionally, if sufficient interest is expressed by prospective PAL users, we will open interim filing windows to accept applications for unassigned PALs, *i.e.,* PALs that could be made available for auction, before the expiration of an ongoing three-year PAL term. Therefore, as the band develops, our approach provides mechanisms to make PALs available in response to changing market conditions.

58. While we could issue PALs on a non-auctioned basis—as suggested by Federated Wireless and CTIA—we conclude that doing so in this band would not result in as efficient an assignment of the spectrum as licensing the spectrum for shared GAA use, except for the limited exception described above. As part of its proposal that we assign PALs in a license area with only one applicant, Motorola Solutions asserted that the "interested party would be expected to pay a reasonable licensing/administrative fee for such PAL use, and may be expected to pay a reasonable fee to a SAS database provider for interference protection." Neither Motorola Solutions nor WISPA put forward any theory as to how we would assess this fee under our statutory authority, or how it could replicate a mechanism reflecting the spectrum's fair market value. We believe the record on this issue is insufficient to support Motorola's proposal. We continue to believe the adopted rules are the best way to "encourage the larger and more effective use of radio in the public interest" and nothing in the record supports reconsideration of this determination.

C. SAS and CBSD Response Time

59. Background. In the *3.5 GHz R&O,* the Commission adopted section 96.15(a)(4) (47 CFR 96.15(a)(4)), which requires that, for CBSDs operating in the 3550–3650 MHz band, "[w]ithin 60 seconds after the ESC communicates that it has detected a signal from a federal system in a given area, the SAS must either confirm suspension of the CBSD's operation or its relocation to another unoccupied frequency, if available." The Commission adopted identical requirements for CBSDs operating in the 3650–3700 MHz band. The Commission also requires that "A CBSD must receive and comply with any incoming commands from its associated SAS about any changes to power limits and frequency assignments. A CBSD must cease transmission, move to another frequency range, or change its power level within 60 seconds as instructed by an SAS."

60. Motorola Solutions, Nokia Solutions, and WinnForum petition the Commission to increase the first of these two intervals (SAS reconfiguration response time in section 96.15) from 60 seconds to 600 seconds. WinnForum contends that this increase is necessary to ensure a smooth handover of CBSDs to new frequencies or bands. They emphasize the complexity of optimizing these transitions among a number of different SASs and network operators. WinnForum also argues that some critical infrastructure and emergency use cases may need a longer time to effect a seamless transition from the affected frequencies. However, they acknowledge that most CBSDs could probably be cleared after only 300 seconds. Nokia Solutions also suggests that the reconfiguration time be increased to 600 seconds and indicates that, even in a best case scenario, a complex network cannot be suspended or relocated within 60 seconds. Google and WISPA also support WinnForum's Petition.

61. Google notes that there is a tension between the SAS reconfiguration rule and the second of these two intervals (the reconfiguration requirement in section 96.39 that requires CBSDs to cease operations or move to a non-interfering frequency within 60 seconds of receiving instructions from the SAS) (47 CFR 96.39). According to Google, in practice, the combination of these two rules would be to effectively require CBSDs to take action in less than 60 seconds. Google contends that, to resolve this tension, the Commission should increase the interval for SASs to respond to ESC directions but retain the 60-second timeframe for CBSDs to respond to SAS commands.

62. SIA argues that the 60-second response time in section 96.39 (47 CFR 96.39) for CBSDs to move or discontinue operations is too long and asks that the Commission reduce that timeframe. SIA argues that even a one-minute delay could cause significant damage to incumbent satellite systems. SIA asserts that, since the CBSD response time is in addition to any additional time needed for the SAS to process information from the CBSD and communicate with the device, interference could continue for longer than 60 seconds in practice. SIA asserts that the petitions for increases in SAS response time only reinforce their concerns about how quickly harmful interference into incumbent FSS earth stations can be addressed. Google asserts that SIA misunderstands the different types of commands addressed by the Commission's rules and the arguments made by petitioners. Google contends that nothing in petitioners' requests to increase the SAS reconfiguration timeframe in section 96.15 (47 CFR 96.15) casts doubt on the ability of CBSDs to respond to instructions from an SAS within the 60-second window established by section 96.39 (47 CFR 96.39).

63. Discussion. After review of the record, we believe that the SAS reconfiguration time should be increased. Petitioners contend that 60 seconds is an insufficient window for SASs and licensees to effectively reconfigure their networks in response to reported interference. Indeed, Nokia Solutions argues that it may be impossible to effect such changes even under ideal circumstances. These problems are likely to be more acute with networks consisting of a large number of CBSDs. While we take no position on the veracity of these claims, from the evidence presented, it appears that increasing the SAS reconfiguration timeframe will help to promote robust development and deployment of broadband networks in the 3.5 GHz Band.

64. However, given the importance of the incumbent services present in the band, we do not believe that the 600-second SAS reconfiguration timeframe suggested by commenters is appropriate. Federal Incumbent Users must be assured that their mission critical operations will be protected from harmful interference and that any interference reported will be addressed in a timely manner. Therefore, we amend section 96.15(a)(4) and (b)(4) of the rules (47 CFR 96.15(a)(4) and (b)(4)) and extend the SAS reconfiguration

timeframe to 300 seconds. Both Nokia Solutions and WinnForum indicated that, while not ideal, a 300-second reconfiguration window would be adequate for a majority of CBSDs to effectively cease transmitting or transition to a non-interfering frequency. They do not provide a basis for why as much as 600-seconds is needed, even for a large network. We also amend sections 96.15(a)(4) and (b)(4) (47 CFR 96.15(a)(4) and (b)(4)) to clarify that the 300-second reconfiguration window applies to notifications regarding federal use from the ESC or any other source, including federal Incumbent Users themselves. This modification is necessary to ensure that federal Incumbent Users are protected from harmful interference in all circumstances. However, the 300-second timeframe will not necessarily apply if the President of the United States (or another designated Federal Government entity) issues instructions to discontinue use of CBSDs pursuant to section 706 of the Communications Act of 1934 (47 U.S.C. 157), as amended (War Powers of President) (47 U.S.C. 606). In such cases, SAS Administrators must instruct CBSDs to cease operations as soon as technically possible (but no more than 300-seconds). We also note that at this time there is no indication of how the increase in the SAS reconfiguration time will impact federal radar systems. If it is demonstrated there is an operational impact to the federal radar systems, the Commission will review the SAS reconfiguration timeframe and will take appropriate steps to address the operational impact to federal radar systems.

65. While some commenters claim that even this extended reconfiguration window may cause service interruptions in some cases, we believe that 300 seconds will ordinarily provide operators with sufficient time to smoothly discontinue transmissions or move to non-interfering frequencies. Moreover, given the critical importance of the federal operations in the band, we must ensure that CBSDs are shut down as quickly as possible after the presence of federal operations is reported by an ESC or actual interference is reported by a federal user. This change also resolves the tension between sections 96.15 and 96.39 (47 CFR 96.15(a)(4), 96.39(c)(2)) pointed out by Google. Therefore, we find that a 300-second response timeframe strikes the appropriate balance between protecting incumbent operations and facilitating commercial deployments in the band. In addition, given the technical capabilities of SASs and CBSDs, we believe that it is both reasonable and technically feasible to require Citizens Broadband Radio Service users to comply with this modified response timeframe.

66. We refuse SIA's request to shorten the 60-second CBSD reconfiguration timeframe in section 96.39 of the rules. As Google correctly notes, SIA's arguments on this point were considered by the Commission when the rule was adopted. SIA does not raise any substantive new arguments that would compel us to override our prior decision. To the extent that incumbent FSS earth station licensees may have specific, time-limited requests for protection during certain periods, we encourage FSS licensees to work with SAS Administrators to address these concerns. As detailed in section III(H)(2) and section 96.17(f) (47 CFR 96.17(f)), SAS Administrators must develop procedures to receive and respond to such requests. Accordingly, in light of this requirement, we continue to believe that the 60-second CBSD reconfiguration timeframe in section 96.39 (47 CFR 96.39) is sufficient to ensure that federal and non-federal users are protected.

D. CBSD Power Limits

67. Background. In the *3.5 GHz R&O,* the Commission found that "it is vitally important to establish flexible, yet simple, rules that would allow for a wide variety of innovative services to be deployed in the 3.5 GHz Band." To advance this goal, the Commission defined two categories of CBSDs—Category A and Category B—with parameters appropriate for different use cases. Category A and Category B CBSDs are differentiated primarily by their maximum permissible power and the rules governing their deployment. In addition, Category B CBSDs may only be authorized in the 3550–3650 MHz portion of the band after an ESC is approved and operational. GAA users and Priority Access Licensees may operate CBSDs in both categories and must operate in accordance with instructions from an SAS which, for interference prevention purposes, may authorize an operational power level below the maximum allowable power level (47 CFR 96.41, 96.43, 96.45).

68. Category A CBSDs are limited to a maximum conducted transmit power of 24 dBm and a maximum EIRP of 30 dBm in 10 megahertz and may be deployed either indoors or outdoors (with antennas for outdoor deployments not exceeding 6 meters height above average terrain) (47 CFR 96.41(b), 96.43(a)). These parameters are consistent with the baseline small cell use case proposed in the FNPRM and the phased federal-commercial sharing plan proposed by NTIA and adopted in the *3.5 GHz R&O.*

69. Category B CBSDs, which may only be used outdoors, are permitted to operate at higher power than Category A, providing greater flexibility and ensuring ongoing compatibility with existing 3650–3700 MHz band operations (47 CFR 96.41(b), 96.45). In non-rural areas, the conducted power limit is the same as Category A (24 dBm/10 MHz), but the EIRP limit is 40 dBm/10 MHz. In rural areas, the conducted power limit is increased to 30 dBm/10 MHz and EIRP to 47 dBm/10 MHz (47 CFR 96.41(b)). The EIRP limit was set to encourage the use of higher gain antennas and directional transmission in urban areas to facilitate co-existence of PALs and GAAs in spatially tight spectrum sharing environment. The higher rural power limits reflect challenges for deploying wireless coverage in rural areas as well as decreased contention for spectrum resources due to lower population density in those areas.

70. CTIA, Motorola Solutions, Nokia Solutions, Verizon, and WinnForum petitioned the Commission to increase CBSD power limits. AT&T and Federated Wireless supported these arguments. Petitioners assert that the maximum power levels for Category A devices should be raised to 36 dBm EIRP. Petitioners contend that the Category A power levels adopted by the Commission are insufficient to provide significant indoor coverage. Nokia Solutions and WinnForum also contend that a 36 dBm maximum EIRP would be consistent with levels the Commission has approved for unlicensed devices.

71. Petitioners also argue that the maximum permissible EIRP for Category B CBSDs should be raised to 49 dBm for non-rural deployments and to 56 dBm for rural deployments. WinnForum contends that the proposed increases would bring the Commission's rules in line with the power levels of existing urban pico-cells. Verizon contends that the maximum EIRP that the Commission adopted for Category B CBSDs is well below the power levels of the small cells that are used in current licensed deployments. Verizon also argues that the existing rules would significantly limit the coverage that each cell could achieve, driving up network costs. Federated Wireless agrees and adds that "Even at the increased EIRP limit, CBSDs will still operate at power levels no greater than those employed in typical small cell deployments."

72. Many petitioners also assert that the Commission should increase the flexibility for operators to deploy lower

gain antennas by relaxing the limitations on conducted power for Category A and B CBSDs. For example, Nokia Solutions and Verizon argue that the limitations on conducted power should be removed entirely to provide additional flexibility network operators in the 3.5 GHz Band. WinnForum proposes that the allowed conducted power be scaled up 1 dB for each 1 dB lost in antenna gain, up to the maximum of 40 dBm conducted power for Category B CBSDs. WinnForum argues that this approach would not preclude the use of omni-directional antennas while still maintaining adequate coverage areas for outdoor deployments.

73. SIA opposes any increase in maximum EIRP for Category A or Category B CBSDs and, in fact, argues that they should be reduced to levels stated in the *FNPRM.* SIA contends that higher EIRP limits will increase the risks of interference with incumbent FSS earth stations and significantly increase the size of required separation distances around these stations. They also see risks associated with not limiting the antenna height for Category B CBSDs due to interference to incumbent in-band and out-of-band FSS receivers.

74. WISPA argues that the Commission should not change the maximum allowable EIRP for Category B CBSDs. In WISPA's view, the Commission's rules strike the proper balance between various interests and encourage operators of outdoor networks to deploy more efficient, high-gain, sectorized antennas. Federated Wireless disagrees with WISPA and contends that increased EIRP and flexibility is essential to promote innovation and enable more efficient spectrum use.

75. Discussion. After review of the record, we agree with commenters that contend that additional flexibility for non-rural outdoor CBSDs would promote deployment in the band and, accordingly, we increase the maximum allowable EIRP for non-rural Category B CBSDs from 40 dBm/10 MHz to 47 dBm/10 MHz, making the power levels allowed for both non-rural and rural deployments the same. Category B CBSDs will continue to be authorized for use in the 3550–3650 MHz band only after an ESC is approved and commercially deployed consistent with sections 96.15 and 96.67 (47 CFR 96.15, 96.67). We also eliminate the conducted power limits for all CBSDs. However, we also conclude that it would not be in the public interest to increase the maximum allowable EIRP for Category A CBSDs and rural Category B CBSDs beyond the levels established in the *3.5 GHz R&O.* Combined, these changes will provide increased flexibility to all network operators without increasing the potential for interference in the 3.5 GHz Band.

76. As we stated in the *3.5 GHz R&O,* we are cognizant that the determination of power limits for all categories of CBSD must balance the consideration of several different public interest objectives. On the one hand, higher limits may provide more technical and operational flexibility for users of the band to increase coverage with fewer CBSDs, potentially reducing deployment costs. On the other hand, lower power limits may lead to greater spatial reuse of the band, reduced coexistence challenges, and increased aggregate network capacity. Our determinations herein strive to balance these considerations to create a flexible regime suitable for a wide variety of use cases.

77. With regard to Category B CBSDs, we agree with commenters that higher maximum EIRP may help promote more flexible use and reduce deployment costs in non-rural areas while not significantly increasing coexistence issues. Specifically, we increase the maximum EIRP for Category B CBSDs in non-rural areas to 47 dBm/10 MHz to match the maximum EIRP permitted in rural areas. Petitioners generally argue that higher power is needed to facilitate network deployment and decrease costs. Although we remain concerned about more substantial power increases in more congested areas, we agree that allowing non-rural CBSDs to match the EIRP of rural CBSDs is consistent with the Commission's goals for the Citizens Broadband Radio Service and is a modest increase that will not adversely affect the interference environment in the 3.5 GHz Band.

78. However, we do not agree that the maximum EIRP for Category B CBSDs should be increased to 49 dBm/10 MHz in non-rural areas and 56 dBm/10 MHz in rural areas as requested by several petitioners. While we see the merit in increasing the maximum power available to network operators using Category B CBSDs in non-rural areas, we believe that an increase to 47 dBm/10MHz to match the level permitted for rural CBSDs will adequately address the concerns raised by Petitioners without negative effects on the interference environment in the band. This change represents a significant increase in power for non-rural applications with a corresponding potential for more coverage area for each CBSD. This change will also simplify the rules by removing the distinction between rural and non-rural power levels, allowing for uniform development and deployment of Category B CBSDs. We also note that Category B CBSDs will continue to be authorized for use in the 3550–3650 MHz band only after an ESC is approved and commercially deployed consistent with sections 96.15 and 96.67 (47 CFR 96.15, 96.67).

79. We continue to believe that the power limit that we adopted for Category A CBSDs in the *3.5 GHz R&O* is appropriate for the baseline—primarily indoor or at street level—small cell use case in the band. Moreover, the Exclusion Zones protecting federal radar systems that were studied by NTIA and adopted in the *3.5 GHz R&O* are based on a maximum EIRP of 30 dBm/10 MHz. Any change to the maximum EIRP for Category A CBSDs would require the Exclusion Zones to be reconsidered and expanded, preventing deployment in large portions of the country prior to the development and approval of an ESC.

80. While we acknowledge that some petitioners would prefer that we increase the Category A power levels to allow higher power levels indoors, we believe that the rules appropriately balance the need for operational flexibility with the need to promote efficient spatial and spectral reuse of the band. Transmitting at higher power levels indoors and low outdoor elevations—especially in high traffic areas with multiple PALs and GAAs operating in the same or nearby locations—would likely present significant coexistence challenges. Higher power levels in dense indoor deployments would also increase the likelihood of interference from operators assigned to adjacent channels due to receiver blocking effects. Thus, given the interference risks associated with higher power levels, the delays in deployment of this new service that would result from revisiting the size of the Exclusion Zones prior to implementing an ESC capability, and the disruption to the balance between PAL and GAA use struck in the *3.5 GHz R&O,* we conclude that the maximum EIRP for Category A CBSDs should remain capped at 30 dBm/10 MHz.

81. We are also cognizant of the concerns raised by SIA regarding the need for greater protections for FSS earth stations in the presence of higher power CBSDs but note that the FSS interference protection criteria described in section IV(C)(1) addresses these concerns. We emphasize that the increase in allowable EIRP for non-rural Category B CBSDs is an increase in the maximum allowable EIRP and should not be construed as a guaranteed power level for CBSD deployments, whether

they are operated on a GAA or Priority Access basis. We note that CBSDs must still comply with the Commission's rules to prevent interference to Incumbent Users, including the requirements to operate only at power levels and in locations authorized by the SAS (47 CFR 96.39(c)). Indeed, given that the potential for co-channel and adjacent channel interference may increase at higher power levels, the SAS's responsibility to authorize lower maximum operational power limits, when and where needed to meet the interference protection requirements as defined in Commission's rules, will be even more important in light of the increased maximum power levels authorized herein.

82. Finally, we find that removing maximum conducted power limits for all CBSDs will provide operators with additional flexibility for network deployments and encourage investment in the band. Several petitioners, including WinnForum, Verizon, and Federated Wireless, contend that the Commission's rules requiring Category B CBSDs to use sectorized, highly directional antennas in urban areas would lead to inefficient deployments. Notably, Federated Wireless contends that, since most CBSDs will be deployed below the clutter in urban areas, sectorized antennas would be unable to provide the coverage needed for urban deployment. In addition, since the Exclusion Zones and other protection contours in the band are based on EIRP, removing the conducted power limits should not increase the required protection areas around incumbent sites. Therefore, we agree with petitioners that, on balance, increased flexibility will serve the public interest and promote investment in the 3.5 GHz Band. We note that this has no impact on our OOBE requirements, which continue to be expressed in terms of conducted power. That is, although the rule changes described in this section will allow higher total conducted power, they do not allow higher OOBE power.

83. In making this change to remove maximum conducted power limits for all CBSDs we also recognize that we must limit the peak to average power ratio (PAPR) of signals in the band so that excessive peak power levels do not cause transient interference into other systems. Many commenters have expressed interest in deploying LTE equipment in the 3.5 GHz Band. We note that such signals use OFDM based modulation, which can have a large PAPR. NTIA recently published emission spectrum measurements for a 3.5 GHz LTE hot spot device shows that the peak to average ratio of such devices may range as high as 12–13 dB. Thus, based on these measurements and consistent with the Commission's rules in other licensed mobile broadband services, we are limiting CBSD PAPR to no more than 13 dB (47 CFR 24.232(d) and 27.50(a)(1)(B) and (d)(5)).

84. Finally, SIA argues that unlimited antenna heights for Category B CBSDs will necessitate larger protection areas for FSS earth stations. SIA does not propose a specific remedy or alternate rule governing antenna heights. We note that Category B CBSDs are required to report antenna height as part of their CBSD registration under section 96.45(d) (47 CFR 96.45(d)) and SASs are required to take such antenna height (along with maximum power, location, antenna configuration, and other registered information) into consideration when calculating potential interference effects and protection distances (47 CFR 96.17(d), 96.45(d), 96.53, 96.55). Indeed, the protection criteria set forth in the rules may require an effective limit on Category B antenna elevation in some cases. We continue to believe that the SAS can utilize information reported by CBSDs to effectively coordinate operations in the 3.5 GHz Band and see no reason to impose restrictions on the height of Category B CBSD antennas at this time.

E. OOBE and Adjacent Channel Emissions Limits

1. OOBE and Adjacent Channel Emissions

85. Background. In the *3.5 GHz R&O,* we adopted emissions and interference limits that will further the Commission's goals and promote effective coexistence of different users in the band. Specifically, we adopted the following conducted OOBE limits for devices in the Citizens Broadband Radio Service:

- −13 dBm/MHz from 0 to 10 megahertz from the SAS assigned channel edge
- −25 dBm/MHz beyond 10 megahertz from the SAS assigned channel edge down to 3530 MHz and up to 3720 MHz
- −40 dBm/MHz below 3530 MHz and above 3720 MHz

86. CTIA, Nokia Solutions, and SIA petition the Commission to change its OOBE limits. CTIA contends that the −40 dBm/MHz OOBE limit simply is too restrictive and is not necessary to protect operations in the adjacent band below 3530 MHz and above 3720 MHz. CTIA also asserts that, if the Commission determines that the −40 dBm/MHz limit is necessary to protect adjacent operations, the Commission should increase the transition gap to 40 megahertz to allow operators using 20 megahertz LTE channels to operate at higher power. Qualcomm supports CTIA's comments and asserts that the FCC should not implement tighter OOBE limits at the 3700 MHz band edge for certain classes of devices to protect C-band FSS earth stations. According to Qualcomm, stringent OOBE limits will challenge equipment designs and likely force mobile devices to use significantly less power and/or operate well inside the 3.5 GHz Band edges to comply. Google, T-Mobile, and WISPA also support relaxation of the OOBE limits.

87. Nokia Solutions recommends that the Commission define OOBE limits that comply with 3GPP specifications and would allow the use of Bands 42 and 43 in the United States. According to Nokia only the requirement of −25 dBm/MHz beyond 10 MHz from the assigned channel edge down to 3530 MHz and up to 3720 MHz complies with the 3GPP specification.

88. CTIA also argues that the Commission should adopt a limit of −13 dBm/MHz from 0–20 megahertz outside the assigned channel edge and a limit of −25 dBm/MHz for frequencies more than 20 megahertz outside each assigned channel edge. Qualcomm agrees and contends that the emissions limits that apply outside of the channel of operation were designed around supporting 10 MHz-wide LTE channels, and thus would force 20 MHz LTE and 40 MHz LTE operations to use substantially lower transmit power than the level 10 MHz LTE operations are permitted to use. According to Qualcomm, such reductions will create coverage challenges and limit the band's ability to support wider bandwidth LTE operations. Similarly, T-Mobile argues that 20 megahertz LTE channels would have to be at least 20 megahertz from the channel-edge to meet the −25 dBm/MHz limit without significantly reducing power levels. The reduced power necessary to meet the −25 dBm/MHz limit would in turn reduce coverage of those 20 megahertz channels and would depress operators' desire to deploy those channels.

89. On the other hand, SIA argues that more restrictive OOBE limits are needed to effectively protect C-Band FSS earth stations from CBSD transmissions. SIA also asserts that the OOBE limits adopted by the Commission were implemented without the required legal notice. According to SIA, under the Commission's current OOBE rules, separation distances between CBSDs and FSS earth stations could be more

than 15 km. GCI also argues that the Commission should implement more stringent OOBE limits at the upper edge of the 3.5 GHz Band. According to GCI, at a minimum, a −40 dBm/MHz limit should be implemented at the band edge to protect C-Band FSS earth station receivers.

90. Some parties support the Commission's current OOBE limits. Notably, Verizon argues that the current OOBE limits are sound and oppose further OOBE restrictions. Federated Wireless also contends that the Commission need not reconsider the OOBE issue now.

91. *Discussion.* After review of the diverse record on this issue, we deny the petitions for reconsideration that requested changes to the OOBE limits that the Commission adopted in the *3.5 GHz R&O.* We continue to believe that the existing OOBE rules properly balance the need to protect operations in adjacent bands—and in adjacent channels within the 3.5 GHz Band—with the need to create an environment that will promote robust deployment of broadband systems in the band.

92. We also believe that, while the OOBE limits are more restrictive than those in other bands, they are wholly consistent with the capabilities of the equipment and services likely to be deployed in the 3.5 GHz Band. For emissions below 3530 MHz and above 3720 MHz, NTIA measurements show that the OOBE of commercial products that operate within the 3.5 GHz Band can be lower than −40 dBm/MHz at offsets higher than 20 megahertz. Thus, according to NTIA research, the approach adopted by the Commission appears to be practically realizable with existing state-of-the-art products at little or no added cost and will provide additional protection for incumbent systems while allowing for more extensive deployment of CBSDs in the 3.5 GHz Band.

93. We disagree with CTIA and Qualcomm's argument that the Commission's OOBE limits should be changed since they would force operators using 20 megahertz channels to reduce power to comply with the rules. As we noted in the *3.5 GHz R&O,* ten megahertz channels provide a flexible, scalable, and practically deployable bandwidth for high data rate technologies, permitting multiple Priority Access Licensees to operate in the same geographic area. While Citizens Broadband Radio Service users are permitted to aggregate PAL channels or operate across wider bandwidths—consistent with section 96.31 (47 CFR 96.31)—the technical rules required for effective coexistence between and among different users of the band do not change, regardless of the how much bandwidth is in use. We also note that power reduction may not be necessary if Citizens Broadband Radio Service users utilize robust filters or other alternative methods to address our OOBE limits. While the flexibility to aggregate spectrum is a key element of the Commission's licensing regime, reducing OOBE limits solely to accommodate wider bandwidths would not further the principles of shared access that are at the heart of this proceeding.

94. Moreover, petitioners do not provide convincing evidence or technical analysis to support their claims regarding power reduction nor do they address the potential effects such changes could have on adjacent channel operations. We also expect to see more spectrally efficient commercial products enter the marketplace in the near future that will meet or exceed our requirements. The current rules support the development of such new and innovative technologies while ensuring a proper balance between the current and future users of the band.

95. We also reject SIA's arguments that the strictest OOBE limits adopted by the Commission (−40 dBm/MHz) should have been set beginning at 3680 MHz, which is 20 megahertz below the lower edge of the adjacent C-Band, rather than at 3720 MHz. SIA argues that failing to do so will lead to impermissible interference into C-Band FSS earth stations. As we stated in the *3.5 GHz R&O,* the −13 dBm/MHz OOBE limit at the band edge is consistent with Commission precedent both in this band and in other licensed spectrum bands. In addition, the transition gap that requires OOBE to drop to −25 dBm/MHz after a 10 megahertz offset and −40 dBm/MHz above 3720 megahertz is significantly more stringent than limits in other bands or the limits that the Commission previously adopted for the 3650–3700 MHz Wireless Broadband Radio Service. The Commission adopted these more stringent limits in recognition of the need to provide additional protection for important operations in the C-Band. Indeed, as detailed above, several petitioners continue to object to these limits as too stringent for certain wireless broadband uses in the Citizens Broadband Radio Service. After review of the record, we remain convinced that the OOBE limits adopted in the *3.5 GHz R&O* strike the appropriate balance between the need to facilitate innovation and investment in the 3.5 GHz Band and the need to protect licensed C-Band FSS earth stations from interference.

96. However, while we maintain the existing OOBE limits, we do acknowledge SIA's concerns regarding potential interference into C-Band receivers used for critical telemetry, tracking, and control (TT&C) operations at the band edge. Therefore, as detailed in section IV(C)(2), we adopt rules to provide additional protection for these facilities. We also adopt new rules to facilitate coordination between Citizens Broadband Radio Service users and licensed C-Band FSS earth stations to address any interference issues that may arise.

97. Finally, we reject SIA's assertion that the Commission did not provide proper notice prior to adopting the current OOBE rules in the *3.5 GHz R&O.* As SIA itself notes, in the FNPRM, the Commission: (1) Proposed an OOBE limit of −13 dBm/MHz at the band edge and −40 dBm/MHz and 30 megahertz above and below the proposed band edges; (2) sought comment on both OOBE limits and the size of the transition gap; and (3) sought comment on extending the Citizens Broadband Radio Service to 3700 MHz. Even prior to that time, the *Licensing PN* sought comment on "[w]hat provisions would need to be made for incumbent operators" if the band were so extended. And in the *3.5 GHz R&O* itself, the Commission determined to seek further comment on "steps we can take over and above those we've already taken to preempt and mitigate the potential for interference" to incumbent C-Band licensees, referring specifically to "our baseline emission performance rule."

98. As SIA correctly states, "a final rule need not be an exact replica of the rule proposed in the Notice, the final rule must be a 'logical outgrowth' of the rule proposed." In this case, the Commission had sought comment on the need for interference protections relating to extension of the band edge from 3650 MHz to 3700 MHz. The OOBE limits later proposed in the FNPRM were clearly intended to apply to the upper and lower bounds of the Citizens Broadband Radio Service and the Commission made it clear that those bounds could extend to 3700 MHz. Indeed, the Commission originally sought comment on extending the Citizens Broadband Radio Service to 3700 MHz in the original NPRM released in December of 2012. Thus, the extension of the 3.5 GHz Band—and with it the OOBE rules applicable at and beyond the band edge—was wholly foreseeable and a clear logical outgrowth of the Commission's proposals. In addition, the *3.5 GHz R&O* itself provided parties with yet a further opportunity to comment on the

approaches that the Commission could utilize to protect C-Band FSS earth stations.

2. Emission Power Measurements and Testing Methodology

99. Background. In the *3.5 GHz R&O,* we adopted a rule that requires that emission power measurements be performed with a peak detector in maximum hold. CTIA objects to this testing methodology and asks the Commission to adopt a different measurement technique. Qualcomm, T-Mobile, WinnForum, and WISPA support CTIA's request. CTIA contends that the use of an RMS detector to measure emissions would be wholly consistent with the Commission's rules governing most other commercial licensed and unlicensed services. In addition, CTIA states that the peak to average ratio for emissions from LTE signals can easily exceed 10 dB and compelling Citizens Broadband Radio Service users to operate with that much less power would effectively cripple the band's ability to support mobile broadband operations. WISPA agrees and adds that, not only would measuring at peak power require mobile operations to operate at significantly less power, but this would similarly impinge upon the ability of fixed providers to operate at the maximum authorized power.

100. In addition, WinnForum argues that 10+ dB signal strengths over average captured by the current rule would exist for less than 0.01% of the time for any one signal. WinnForum also contends that requiring devices to be tested using a peak detector at maximum hold effectively requires that devices be certified at the maximum possible signal strength at any given time and is a very poor representation of actual interference impact. According to WinnForum, the part 96 emission limits are already stringent, and become simply unattainable when adding over 10dB penalty through the peak detector/max hold requirement. WinnForum also claims that the effects would likely be similar for other wideband systems (Wi-Fi, WiMAX, etc.).

101. SIA disagrees with WinnForum and argues that the Commission should retain the peak measurement test for OOBE. SIA states that ignoring peak emission levels in favor of reliance on average measurements would undermine the prophylactic objectives of the OOBE limits. SIA contends that, by CTIA's own admission, the change would allow power increases of 10 dB or more. According to SIA, because peak emissions can have significant interference effects, the Commission must continue to require use of a peak detector to determine OOBE limit compliance.

102. Google supports WinnForum's filing and argues that SIA's claims should be rejected. Google asserts that all signals, including LTE, Wi-Fi, WiMAX, and even Gaussian thermal noise will have statistical variations in the instantaneous amplitude of the waveform and argues that, for this reason neither cellular, AWS, PCS, or 700 MHz emission are measured using peak hold. Google also asserts that, since the PAPR and signal statistics of LTE and Gaussian thermal noise are similar, the measurement of their interference potential should be treated in the same way. Accordingly, Google argues that if SIA insists on measuring CBSD emissions using peak values, the system noise of FSS receivers should be characterized in the same manner.

103. Discussion. After careful review of the record, we conclude that emission power measurements may be performed using either RMS-detection or peak-detection. We agree with petitioners that requiring the use of a peak detector operating at maximum hold to test emission limits does not serve the public interest. As WinnForum argues, requiring the use of peak measurements may effectively prevent the development and deployment of equipment in the band. Moreover, the decision to allow the use of RMS measurements is consistent with existing Commission rules for several other licensed services in the past, including the AWS bands 47 CFR 27.50(b)(11), (c)(11), (d)(6), (h)(4)(i), 24.132(d)–(f). In other services, the Commission has adopted the emission power measurement by giving the option of detecting peak value or average value 47 CFR 27.53(a)(7), (h)(3)(iii). This decision will provide the measurement lab with a great deal of flexibility to select the appropriate detection type during the certification process.

104. RF power measurement is a function of the receiver bandwidth and detection method whether the signal is detected using a peak or average technique. LTE signals are using OFDM based modulation in downlink which are known to have large PAPRs which may be beyond the 10 dB margin. Google also points out that the PAPRs and signal statistics of LTE and Gaussian thermal noise are generally similar, and thermal noise is typically evaluated using mean measurements. Recent NTIA lab measurements of emission spectrum for a commercial LTE hot spot device operating in the 3.5 GHz Band has shown PAPRs of up to about 12–13 dB. The PAPR for an LTE signal is a random value that fluctuates over a wide range and depends on modulation type and number of sub-carriers used.

105. We reject SIA's argument that retaining the peak detector at maximum hold measurement requirement is necessary to prevent harmful interference into C-Band FSS earth stations. SIA contends that this measurement approach is necessary because "peak emissions may have significant interference effects." However, the issue is not what is commonly referred to as "peak power" but rather extremely short duration transient signals that typically have little energy and, therefore, generally do not reflect interference potential. In effect, requiring devices to be tested using a peak detector at max hold requires devices to be certified at their "worst case" configuration which would present an unrealistic view of the actual interference potential of any given device. This approach is inconsistent with our oft stated rejection of worst case approaches to measurements and interference protection analysis. Moreover, as Google notes, SIA's assertion that CBSD emission levels should be measured using a peak detector, while their own system noise levels are exempt from such a requirement, is logically inconsistent and mathematically unsound.

106. In addition, WinnForum argues that, since incumbent protections in the 3.5 GHz Band will be calculated using aggregate interference from multiple CBSDs, certifying CBSDs using a peak detector at max hold will compound the effects of these worst case certifications, yielding an unrealistic picture of the RF environment. On the other hand, calculating aggregate interference effects based on average measurements will present a more realistic picture of the actual RF environment for the purpose of determining protection of incumbent systems, including FSS earth stations. We agree with CTIA, Google, and WinnForum that maintaining the peak detector at maximum hold requirement would be unnecessary, particularly in light of the cap on peak-to-average emissions we adopt below. Maintaining this approach would also be inconsistent with the Commission's goals for the Citizens Broadband Radio Service and would not promote spectral efficiency and co-existence among various users in the 3.5 GHz Band and adjacent bands.

107. It is also typically easier to measure emissions using the peak detected signal as part of standard

measurements. Accordingly, under our revised rules, if the device passes the peak detection requirements, no further RMS-detection is needed to meet the OOBE conditions; otherwise, the RMS-detection method can be applied. However, in order to circumvent any effect of peak power spikes, as indicated in the CBSD power requirement section, we will also require that the PAPR of the transmitter output power not exceed 13 dB consistent with the Commission's previous rules in other licensed mobile broadband services 47 CFR 24.32(d), 27.50(a)(1)(B) and (d)(5). NTIA lab measurements on LTE hot spot devices also support our finding that a 13 dB margin is reasonable for industry to achieve.

108. We believe the combination of changing the requirement to include the use of RMS detection for emission measurement, along with setting the PAPR limitation, will diminish the potential for interference between and among Citizens Broadband Radio Service users and Incumbent Users while promoting efficient use of the band. We disagree with SIA's assertions and note that RMS measurement is commonly used by the Commission and, in fact, is commonly used in other bands. Indeed, allowing such flexible measurement techniques here will help promote the next generation of shared spectrum technologies, and will drive greater productivity and efficiency in spectrum usage.

F. Device Geo-Location

1. Location Accuracy and Alternative Measurement Approaches

109. Background. In the *3.5 GHz R&O* we required that all CBSDs must accurately report the location coordinates (referenced to the North American Datum of 1983, NAD83) of each of their antennas to within ±50 meters (horizontal) and ±3 meters (vertical) (47 CFR 96.39(a)). We found that, for the SAS to accurately predict and evaluate interference and channel availability, it must receive and store accurate location information for all CBSDs.

110. Motorola Solutions, Nokia Solutions, and WinnForum filed petitions for reconsideration requesting that Commission relax the existing accuracy requirements and suggest, alternatively, that the Commission allow the SAS to play a role in estimating CBSD location. Google and Federated Wireless also support alternative approaches to ascertaining the location of CBSDs. Specifically, Federated Wireless explains that there are a variety of methods the SAS could use to verify location, such as coordinating with downstream infrastructure or reference to its power levels and other measurements. Google suggests that even if devices cannot meet the specific requirements established by the *3.5 GHz R&O,* the Commission should permit an SAS to calculate spectrum availability based on the geolocation reported by the device, making appropriate adjustments for differences in specificity. Google argues this would incentivize manufacturers to improve location accuracy.

111. WinnForum proposes that the SAS should estimate CBSD elevation and ground level using detailed terrain databases based on the device's reported operating location. Further, WinnForum states that while the ability to meet the horizontal accuracy requirement is readily achievable, the elevation accuracy requirement significantly exceeds the capability of standard GPS equipment, which will be utilized by both CBSDs and professional installers. WinnForum suggests that, in lieu of the vertical location accuracy requirements, for Category A CBSD's, professional installation reports should include the highest floor from which the device will operate and, for Category B CBSDs, the reports should include the antenna height above ground level.

112. Nokia Solutions also recommends that the Commission establish separate vertical location accuracy requirements for outdoor and indoor installations. Nokia Solutions states that, since the primary method used by many equipment vendors for outdoor location is GPS-based, the vertical location accuracy requirement should be aligned to the US Government Position Accuracy standard for worst site conditions as stated in the Global Positioning System Standard Positioning Service Performance Standard. Nokia Solutions argues that, since GPS does not work well or at all indoors, the Commission should eliminate the elevation reporting requirement for indoor installations, allowing the SAS to estimate the CBSD elevation, and require only the GPS location of the building for the horizontal location.

113. SIA and NAB both stress the importance of reliable location accuracy necessary to protect incumbent operations. SIA recognizes that complying with the current requirements may be challenging, particularly with respect to indoor devices where GPS data may not be readily available and both SIA and NAB would support looser requirements so long as "worst case" assumptions are built into the calculations to account for the reduced accuracy. However, in regard to vertical location, simply relaxing the accuracy requirements and allowing the SAS to "estimate" or "compute" a device's elevation is not an acceptable solution, given the importance of a device's vertical position in calculating the potential for harmful interference. Therefore, NAB and SIA argue, the Commission must implement a larger separation distance to account for this uncertainty, if a device cannot meet the requirements or the SAS cannot independently verify a device's elevation.

114. WISPA opposes the petitions that propose to relax or eliminate the existing vertical location accuracy requirements and argues that there is no current mechanism for CBSDs or an SAS to determine the antenna height above ground within the required accuracy. WISPA states the elevation of the CBSD becomes irrelevant for CBSDs installed using external antenna systems and that only the elevation of the actual antenna is relevant for interference mitigation purposes. According to WISPA, the only way for the SAS to ascertain the CBSD antenna system elevation is by using location information provided by a professional installer.

115. Discussion. We maintain the location accuracy requirements established in the *3.5 GHz R&O* and decline the Nokia Solutions and WinnForum Petitions insofar as they request that we modify these rules. We recognize that there are technological challenges to achieving indoor location accuracy. However, as we stated in the *3.5 GHz R&O,* CBSD location is essential for coordinating interactions between and among users in the band and for protecting Incumbent Access users from harmful interference. Without accurate location data, SASs cannot fulfill their core functions in effectively instructing CBSDs to discontinue their operations or change frequencies to protect Incumbent Users.

116. Further, we believe that the location accuracy requirements in the rules are achievable. First, CBSDs are fixed devices, simplifying the reporting of accurate geo-location information, either automatically or with the input of a professional installer. Second, automated reporting of geo-location to our location accuracy requirements may already be achievable in some conditions (*e.g.,* outdoors with clear line of sight to GPS). In addition, at least one party has stated on the record that it has developed technology that can meet the indoor location accuracy rules set forth in the existing rules. Finally, as discussed in section III(F)(2),

professional installation will play an important role in ensuring the SAS can accurately locate devices while automatic location technologies that meet our requirements are tested and developed.

117. Some commenters also suggest that location accuracy requirements could be met alternatively via SAS calculations. We anticipate that SASs will play a key role in verifying the geographic locations of CBSDs and, as technology continues to develop, we encourage SAS Administrators to offer functions to supplement and reinforce CBSD geo-location functions. However, the CBSD is the best source of its own location information, and such features will not discharge the CBSD from complying with our rules.

118. Finally, regarding Nokia Solutions' suggestion that we allow operators to meet vertical location accuracy requirements at a certain confidence level, we decline to make changes to the existing rules. For the aforementioned reasons, the current rules ensure that the SAS can properly locate CBSDs in order to perform its core functions, and we believe them to be achievable over time.

2. Automated Geo-Location and Professional Installation for CBSDs

119. Background. In the *3.5 GHz R&O,* we concluded that Category A CBSDs may utilize either a technical geo-location capability or be professionally installed while Category B CBSDs must be professionally installed (47 CFR 96.39(a), 96.45(a)). We noted that, since CBSDs will be fixed installations, the professional installation option should allow for network deployment in the near term while automatic geo-location technologies for this band are tested and developed that meet our accuracy requirements. We also strongly encouraged the SAS and user community, through multi-stakeholder fora or industry associations, to develop programs for accrediting professional installers who receive training in the relevant part 96 rules and associated technical best practices.

120. NAB and SIA argue that the Commission should eliminate the option for professional installers to report the locations of CBSDs and, instead, require all CBSDs to include a geo-location capability. NAB contends that the Commission's rule is analogous to a similar professional installation requirement adopted in the White Spaces proceeding. NAB argues that, in that proceeding, it identified several errors in device registrations made by professional installers and that such errors prove that the professional installation option is not acceptable in either the White Spaces or the Citizens Broadband Radio Service. NAB contends that professional installation is not necessary for indoor deployments, citing both technological advances and a compromise approach that it submitted in the White Spaces proceeding. NAB also claims that the professional installation is inherently flawed and cannot be rehabilitated by a certification process. SIA agrees with NAB and contends that, regardless of the safeguards adopted, it will be impossible to remove the risk of human error from installations. In addition, on February 26, 2016, the Commission adopted a Notice of Proposed Rulemaking and Order (81 FR 15210, March 22, 2016) that proposed to require automated geo-location capabilities in White Spaces devices, consistent with an agreement between NAB and several White Spaces device manufacturers.

121. Federated Wireless, Google, T-Mobile, and WISPA disagree with NAB and SIA and argue that the Commission should permit professional installation of CBSDs in the Citizens Broadband Radio Service. Google contends that: (1) Discussions of individual records in the White Spaces proceeding are not relevant to this proceeding and that, in any case, the White Spaces entries may have been good faith test cases; (2) the record demonstrates that professional installers can protect Incumbent Access users; and (3) the industry is working collaboratively to develop an effective framework for certifying professional installers in the band. Federated Wireless agrees and argues that, given the requirements of the band, SAS Administrators and Citizens Broadband Radio Service users will be incentivized to ensure that all geo-location information provided to the SAS is accurate. Federated Wireless also notes that professional installation has been used successfully in a number of other licensed services—including two-way satellite broadband.

122. Discussion. We deny NAB and SIA's petitions for reconsideration of the professional installation rule. We also decline to mandate automated geo-location capabilities for CBSDs. As described in the *3.5 GHz R&O,* accurate CBSD location information is essential for coordinating interactions between and among users in the band and for protecting federal and non-federal Incumbent Users from harmful interference. However, we also noted that, while we expect location accuracy technology to continue to develop, in many circumstances, automated reporting of geo-location information that complies with our accuracy requirements will be challenging in this band given currently available technology. Professional installation is intended to fill that gap and facilitate deployment of CBSDs with accurately reported geo-location information while the next generation of automatic geo-location technology is developed.

123. Based on the record, we are not convinced that the capabilities of today's equipment and technology are sufficiently developed to ensure that CBSDs will be able to perform automated geo-location functions in order to reliably meet the location accuracy requirements for the Citizens Broadband Radio Service. As a result, limiting CBSDs to automated geo-location as the only way to meet these requirements would deter near-term deployment on any reasonable scale in the 3.5 GHz Band. As discussed in detail above, several petitioners highlighted the difficulties associated with attaining an accurate vertical reading within +/− 3 meters. Federated Wireless also argues that, while current technology may be sufficient to provide the SAS with a CBSD's location at the requisite degree of accuracy in some outdoor situations, such readings may not be currently possible for a variety of indoor deployments in this band. Since we expect much of the deployment in the 3.5 GHz Band to be indoors, the inability of a CBSD to provide its location indoors would be fatal to many potential use cases for the Citizens Broadband Radio Service. While we are encouraged by iPosi's claim that its technology can provide indoor accuracy readings that meet or exceed or requirements, it has not yet been used commercially in the 3.5 GHz Band, so it is yet to be determined if this technology is appropriate—or economically viable—for all use cases at this time. Thus, while the accuracy of geo-location technology is improving, integrated geo-location technology may not be a viable option for all potential network deployments in the 3.5 GHz Band at this time.

124. We also find unconvincing NAB and SIA's reliance on NAB's claims regarding inaccurately entered location information in the White Spaces databases. NAB and SIA assert that, since professional installers allegedly entered inaccurate locations of devices in White Spaces databases, the entire notion of a professional installation regime is inherently flawed. Indeed, NAB claims that professional installation has proven to be inherently unreliable and that it cannot be rehabilitated through any kind of certification regime. NAB and SIA reach

these conclusions despite the fact that no SASs have been approved or CBSDs deployed in the Citizens Broadband Radio Service and, as such, there is no evidence of actual harm or impropriety in the band to support their claims. Moreover, these parties have provided no convincing evidence that a professional installation option in this band presents any significant potential for such harm. The alleged failures of a dissimilar, uncertified professional installation regime in another service do not warrant eliminating the professional installation option for the Citizens Broadband Radio Service.

125. The Commission noted that the recent changes proposed in the White Spaces NPRM, which included a proposal to eliminate the professional installer option for fixed White Space devices, were "based upon the circumstances specific to fixed white space devices and white spaces databases." In the White Spaces service, the Commission determined not to "define the qualifications of a professional installer in the rules." Here, in contrast, as explained in the *3.5 GHz R&O* and detailed below, the Commission will require professional installers to be trained and certified using an established industry-led process.

126. NAB and SIA unfairly dismiss the importance of a robust industry certification process for professional installers. By relying on such a certification process here, as the Commission has in a variety of other contexts, the rules provide an important protection against the prospect that "any purchaser of a device" could serve as a professional installer. We reiterate that industry-led professional accreditation processes have been used by the Commission and have, in fact, proven successful in other similar situations. In the *3.5 GHz R&O,* we recognized the importance of accurate geo-location information and we strongly encouraged prospective SAS Administrators and Citizens Broadband Radio Service users to develop programs for accrediting professional installers and associated technical best practices. WinnForum announced that, consistent with the Commission's wishes, its members are developing a set of professional installation standards to be implemented by SAS Administrators. Any certification regime developed by WinnForum—or any other entity or organization—must ensure that registered CBSDs comply with the Commission's geo-location rules. WTB and OET will review the SAS's ability to implement and verify the information submitted by professional installers as part of the SAS approval process.

127. Most importantly, the White Spaces service itself is not directly analogous to the Citizens Broadband Radio Service. While both White Spaces devices and CBSDs rely on the White Space databases and SASs, respectively, to protect incumbent services, White Space devices are unlicensed and have no expectation of interference protection. On the other hand, the Citizens Broadband Radio Service is a licensed service in which SASs must be able to effectively coordinate CBSD interactions (both PAL and GAA) to prevent interference between and among the three tiers of users and ensure a stable spectral environment for commercial operations in the 3.5 GHz Band. In other words, in the Citizens Broadband Radio Service the accuracy of the information is important both to protect incumbent services and to protect and enable every other user. This licensed nature of the service coupled with industry certification requirements for professional installers provides a higher degree of accountability for Citizens Broadband Radio Service users and SAS Administrators, ensuring that CBSD locations are accurately reported and verified. In addition, all Citizens Broadband Radio Service users have the rights and obligations incumbent on all Commission licensees, which include serious consequences for violation of Commission rules, including potential revocation and license qualification issues. The Commission has extensive mechanisms available to it to ensure that licensees comply with its rules.

128. In addition, as the Commission has stated on several occasions, approved SASs will have capabilities and responsibilities that exceed those of White Spaces database administrators. Drawing on the lessons learned from the White Spaces proceeding, the Commission will expect SAS Administrators to take appropriate steps to authenticate and verify information that is submitted by professional installers and to immediately correct any inaccurate information in their databases (47 CFR 96.53(d), 96.57(a), 96.63(f)). Our rules require authentication of CBSDs with an SAS and require that SAS Administrators maintain the accuracy of stored data, including CBSD records. The latter requirement places a duty on SAS Administrators to take reasonable steps to validate newly entered data and to purge obsolete data (47 CFR 95.55). Federated Wireless also notes that there are a variety of "quality control methods" that an SAS Administrator may employ—including IP validation, Wi-Fi assistance, and downstream infrastructure coordination—to help verify a CBSD's location. We expect SAS Administrators to develop and implement technological safeguards appropriate to ensure the integrity and accuracy of location data submitted by CBSDs, and we will carefully review proposals from prospective SAS Administrators to determine whether they have demonstrated the capability to do so.

129. While we believe that professional installation is necessary and appropriate for the Citizens Broadband Radio Service at this time, future technological developments may obviate the need to rely on professional installation to ensure the accuracy of CBSDs' location information in some circumstances. Accordingly, we direct WTB and OET to seek input on developments in geo-location technology for CBSDs and the status of the professional installation regime in the Citizens Broadband Radio Service no later than April 28, 2020.

3. End User Device Requirements

130. Background. In its petition, SIA seeks reconsideration of the Commission decision not to mandate that End User Devices include geo-location capabilities. SIA argues that such a mandate is necessary so that an SAS is aware of the location of End User Devices and without such a requirement, the SAS calculations to protect FSS earth stations must be based on worst-case assumptions about location. SIA states these assumptions would include the maximum operational distance between the End User Device and CBSD and the maximum number of End User Devices that could be served by the CBSD. In the alternative, the Commission could define a maximum deployment radius. However, SIA argues, "the use of such worst-case assumptions would result in fewer End User Devices being authorized—and therefore less efficient utilization of the spectrum—than if the SAS had actual location data for each device."

131. Google and WISPA expressly oppose mandating End User Devices to include geo-location technology. Google argues that a geo-location requirement would unnecessarily limit the types of devices available to consumers, as Wi-Fi dongles and other miniature broadband devices are so small that adding geo-location technology would fundamentally alter the form of the device. Both WISPA and Google claim that such a requirement is not needed to protect users from interference, as the

SAS can take into account the "cloud" of End User Devices associated with a particular CBSD when calculating interference protection and the Commission requires End User Devices to positively receive and decode authorization signals from CBSDs.

132. Rajant states that while it is not opposed to requiring geo-location in End User Devices, it would add additional costs to operation in the band. Further, Rajant states that it plans to deploy in places such as enclosed stadiums and underground mass transit tunnels where it would be difficult to obtain GPS location data and while GPS simulators are available, they would be burdensome and hinder flexibility. Therefore, Rajant argues that the Commission should not require geo-location for consumer devices and limit such a requirement to devices intended for industrial, public safety, or commercial use in confined, managed sites.

133. Discussion. We deny SIA's request to mandate geo-location technology in all End User Devices and find that such a requirement is not necessary to ensure compliance with our location accuracy rules or to effectively mitigate interference into incumbent systems. We recognize that FSS earth station licensees are concerned about interference from End User Devices and, indeed we sought comment on how to address these issues in the *Second FNPRM*. However, we agree with Google and WISPA that it is not necessary to mandate that End User Devices include automatic geo-location capabilities to effectively protect Incumbent Users from interference. In addition, such a requirement would unnecessarily limit the types of consumer devices that may be deployed and utilized in the 3.5 GHz Band.

134. Indeed, the rationale we articulated in section III(F)(2) for not requiring automatic geo-location reporting by CBSDs is even more compelling in the case of End User Devices. End User Devices operate at a much lower power than even Category A CBSDs, lowering their potential interference effects and reducing their range of operation. End User Devices are also inherently limited in their area of operation by the coverage of a given CBSD or network of CBSDs. Moreover, since End User Devices will likely include mobile devices—as opposed to fixed CBSDs—reporting their location to the level of accuracy required by our rules would likely exceed the limits of current technology in many locations.

135. Further, the SAS is responsible for managing CBSDs, not End User Devices. Requiring End User Devices to report their locations to the SAS and requiring the SAS to track and manage these devices would greatly exceed the limits of the SAS's responsibilities. As such, it is not appropriate to include End User Devices in our location accuracy rules. However, as noted by WISPA, the rules do require End User Devices to "positively receive and decode an authorization signal transmitted by a CBSD, including the frequencies and power limits for their operation," (47 CFR 96.47(a)) and any device to be certified by the Commission must meet these requirements. Both Google and WISPA also state that WinnForum is reviewing how to treat End User Devices in interference calculations, which will further supplement the SAS's ability to account for End User Device locations. WTB and OET will review any such approaches submitted during the SAS approval process.

G. PAL Protection Criteria

136. Background. To ensure that Priority Access operations are protected from harmful interference, we adopted an aggregate received signal level at PAL license boundaries to be at or below an average power level of −80 dBm when integrated over a 10 MHz reference bandwidth with the measurement antenna placed at a height of 1.5 meters above ground level (47 CFR 96.41(f)). We also permitted Priority Access Licensees to agree to an alternative limit other than −80 dBm/10 MHz at their Service Area boundaries and communicate it to an SAS. In addition, we noted that these signal level requirements would not apply to adjacent census tracts held by the same Priority Access Licensee.

137. WinnForum asks that the Commission modify its PAL protection criteria to more effectively reflect real world interference concerns and protect Priority Access Licensees. WinnForum contends that the PAL protection rule creates several problems that the Commission did not consider in developing the *3.5 GHz R&O*. According to WinnForum, these problems include: (1) The requirement would place a significant burden on the SAS by requiring it to calculate point-to-line interference along a lengthy border; (2) border protections may not effectively protect interior portions of a Priority Access Licensee's Service Area; (3) high elevation census tracts will have a disproportionate effect on CBSD deployments; and (4) the requirement will unnecessarily block co-channel devices. WinnForum suggests that the SAS implement an alternate protection scheme whereby the SAS would protect an operator-defined contour around Priority Access CBSDs to a protection level of −80 dBm/10 MHz anywhere within the contour. WinnForum claims that this revised approach addresses all of the concerns raised in its Petition. Federated Wireless, Google, and Motorola Solutions support WinnForum's Petition. WISPA also agrees that the −80 dBm criterion is inadequate for the reasons described by WinnForum.

138. Discussion. We agree with WinnForum's Petition in part and, accordingly, we revise the rule. Under the revised rule, allowable interference will be calculated for the area within the PAL Protection Area (47 CFR 96.3) described in detail in section IV(A) below rather than along the borders of a Priority Access Licensee's Service Area (47 CFR 96.3). To protect CBSDs authorized to provide service on a Priority Access basis, the SAS must not authorize other CBSDs—whether Priority Access or GAA—on the same channel in geographic areas and at maximum power levels that will cause aggregate interference in excess of −80 dBm/10 MHz channel within a PAL Protection Area. Consistent with our approach elsewhere in this Order, the aggregate co-channel interference level will be defined by a common models utilizing common inputs and assumptions. These models, inputs, and assumptions—including the propagation model and any clutter or terrain assumptions—will be determined during the SAS approval process. This approach is also consistent with the methods that will be used to model and measure the aggregate interference to protect incumbent FSS earth stations and incumbent federal radar systems.

139. Several commenters, including Federated Wireless, Google, Motorola Solutions, and WinnForum support a protection methodology based on modeled aggregate interference protections within the area served by a Priority Access Licensee rather than along the border of a given Service Area or census tract. Notably, Google and WinnForum contend that a protection methodology that utilizes point-to-area interference models to calculate aggregate interference into a Priority Access Licensee's service area will be relatively simple and inexpensive for SASs to implement. Motorola Solutions, WinnForum, and Google also highlight several negative unintended consequences of the Commission's rule requiring CBSDs to meet an aggregate interference threshold along the border of a Service Area.

140. We find the evidence presented by Petitioners compelling and modify section 96.41(d) (47 CFR 96.41(d)) to address the concerns raised in their filings. We note that there were no objections to the protection level of −80 dBm/10 MHz and, indeed, several petitioners supported this interference protection level. Therefore, under the revised rule, the SAS must assign CBSDs such that the modeled aggregate power of co-channel CBSDs is no greater than −80 dBm/10 MHz within the PAL Protection Area. Consistent with our approach to geographic guard bands, described in section IV(A), we conclude that the SAS may not consider adjacent channel interference when calculating these protections and assigning CBSDs. We believe that the stringent out-of-channel emission limits set forth in section 96.41 (47 CFR 96.41) are sufficient to make adjacent channel interference unlikely, particularly for synchronized systems and Category A CBSDs.

H. FSS Protection

141. In its petition, SIA asked the Commission to reconsider or clarify several of its rules regarding the protection of in-band and out-of-band FSS earth stations. These issues included: (1) The status of new FSS earth stations in the band; (2) interference notification procedures; (3) protections for international FSS earth stations; (4) FSS registration requirements; and (5) clarification of protections afforded to in-band and out-of-band earth stations. Specific protection methods for in-band and out-of-band FSS earth stations were raised by the Commission in the *Second FNPRM* and, as such, are addressed in section IV(C) below. SIA's other requests are addressed in this section.

1. Status of New In-band FSS Earth Stations

142. Background. In the *3.5 GHz R&O,* the Commission adopted a change to the Table of Allocations limiting co-primary FSS earth stations in the 3600–3650 MHz band to those authorized prior to, or granted as a result of an application filed prior to the effective date of the *3.5 GHz R&O,* and constructed within 12 months of the initial authorization (47 CFR 2.106, note US107). This rule is consistent with proposals made in the NPRM and FNPRM as well as the licensing freeze imposed concurrently with the NPRM and sunsetted in the *3.5 GHz R&O.*

143. SIA contends that new in-band FSS earth stations should be authorized on a co-primary basis like grandfathered earth stations. They assert that existing limits on FSS operations in the 3600–3650 MHz band and the relatively limited number of recent applications demonstrate that allowing new stations to operate on a co-primary basis will not have a negative effect on the spectrum ecosystem. SIA also argues that restoring the co-primary authorization will further the public interest by allowing FSS licensees to meet the evolving needs of new customers. SIA requests that, at a minimum, the Commission make it clear that existing licensees can replace their equipment while maintaining their current co-primary authorization.

144. Discussion. We reject SIA's petition for reconsideration of the status of new 3600–3650 MHz earth stations. SIA's arguments echo the arguments made by the organization in response to the *NPRM, Licensing PN,* and *FNPRM.* The Commission took these arguments into consideration when it adopted the changes to the Table of Allocations and found that the changes were necessary to ensure the ongoing stability of the band and facilitate widespread access to the Citizens Broadband Radio Service. SIA has not presented any new evidence that would compel us to change our conclusions.

145. However, we agree with SIA's assertion that existing FSS earth station licensees should be permitted to replace antennas and other equipment associated with their licensed earth stations. Such changes may be necessary to ensure continuity of service for existing licensees. Therefore, we find that it is in the public interest to amend our rules to explicitly permit equipment replacement that is otherwise compliant with the Commission's rules (47 CFR 2.106, note US107). Licensees must update their registrations submitted pursuant to section 96.17 if such replacements change any of the parameters included in the registration to continue receiving accurate interference protection under section 96.17 (47 CFR 96.17(d)).

2. Notification of Interference

146. Background. SIA contends that, while the SAS may be able to resolve interference disputes under the rules, the Commission does not establish specific procedures to address interference complaints from FSS licensees. SIA argues that the Commission "must determine to whom interference complaints should be addressed, and should put in place procedures that require immediate suspension of CBSD operations pending investigation. In addition, the Commission should set strict time deadlines for ultimate resolution of an interference complaint."

147. Discussion. We agree with SIA that SASs should be capable of receiving and responding to interference complaints from FSS earth station licensees and we amend our rules to require SASs to accommodate such complaints. One of the core functions of the SAS is to ensure that all registered users operate according to the Commission's rules, including the rules protecting non-federal Incumbent Users (47 CFR 96.17, 96.21, 96.53(h)). This includes enforcing the protection criteria set forth in sections 96.17 and 96.21 (47 CFR 96.17, 96.21) and, under the modified rule, processing and responding to reports of harmful interference or special coordination requests from non-federal FSS licensees (47 CFR 96.17(f)). As with all coordination and interference mitigation efforts in the 3.5 GHz Band, we encourage the parties to work collaboratively to resolve any interference issues that may arise. Although we expect the parties and the SAS to resolve most interference issues among themselves, the Commission retains ultimate authority over the licensees in the band (and the SAS Administrators), as well as the responsibility for enforcing the rules to resolve interference issues in the band.

148. However, we do not believe that it is in the public interest to establish fixed timeframes for investigation and resolution of such issues or to require immediate suspension of CBSDs pending investigation. Rather, each SAS will have to demonstrate the ability to promptly respond to reports of interference during the SAS approval process. We also recognize that different interference cases may be more complex than others and SAS response times may differ depending on the unique circumstances of any given case. In addition, requiring immediate shutdown of CBSDs after any complaint from an FSS licensee would establish an unfair presumption that the complaint is true prior to any investigation. We encourage SAS Administrators and incumbent FSS earth station licensees to work together to establish effective protocols for receiving and responding to complaints of interference.

3. Protection for International FSS Earth Stations

149. Background. In the *3.5 GHz R&O,* we adopted a rule that explains that operations in the 3.5 GHz Band are subject to current and future agreements with the governments of Canada and Mexico and requires SAS Administrators to implement the terms

of any such agreements. As we stated in the *3.5 GHz R&O,* this is approach is consistent with our usual practice for new services.

150. SIA argues that the Commission should impose more strict restrictions on deployments near the Canadian and Mexican borders absent agreements between the countries. Specifically, SIA suggests that the Commission impose similar restrictions to those included in section 90.1337 for 3650–3700 MHz licensees authorized under part 90 of the Commission's rules (47 CFR 90.1337).

151. Discussion. We reject SIA's petition for reconsideration of the Commission's rules governing Citizens Broadband Radio Service operations near international borders. SIA raised similar objections when the Commission proposed this approach in the FNPRM and the Commission considered those arguments in reaching its decision. As noted above, this approach is consistent with our usual practice for new services. SAS Administrators will be required to comply with existing agreements and also to demonstrate that their systems can and will enforce agreements between the U.S., Canadian, and Mexican governments regarding commercial operations in the 3.5 GHz Band once such agreements are completed. We continue to believe that this approach will ensure that CBSD deployments near international borders comply with all applicable international agreements as those agreements are finalized with respect to this band.

4. FSS Registration

152. Background. In the *3.5 GHz R&O,* the Commission adopted measures designed to protect incumbent in-band and adjacent C-Band FSS earth stations from interference. We sought further comment on additional protection measures for both in-band and out-of-band sites, addressed in detail below. In order to adequately implement these measures, the Commission required FSS earth station licensees in the 3600–3650 MHz band and the neighboring C-Band seeking protection under the rules to submit an annual registration that includes certain technical information that will be made available to SAS Administrators (47 CFR 96.17(d) and (e)).

153. SIA requests that the Commission eliminate the requirement that FSS earth station operators must register their stations annually, and if the Commission retains the registration rules, that we revise and clarify these rules. SIA suggests that the SAS obtain the registration information from the publicly available International Bureau Filing System (IBFS) and argues that an annual registration is an unwarranted administrative burden. However, if the Commission does not eliminate the registration requirement, SIA argues for the following changes to the rules: (1) Clarify that earth station operators can register a range of antenna azimuth and elevation angles; (2) explicitly state that new licensees will be protected; and (3) clarify the deadline for registration (47 CFR 96.17(d)). SIA also requests that the Commission revise its rule to clarify that the interference protection rights extend to unlicensed receive-only C-Band earth stations and replace the annual registration requirement with a one-time registration requirement.

154. WISPA opposes SIA's request to eliminate or change the registration requirements, arguing that reporting information on a regular basis and after critical technical changes is necessary to ensure that the SAS can protect FSS earth stations from harmful interference. However, WISPA agrees with SIA that the Commission should harmonize registration requirements for C-Band earth stations so that the SAS can gather all of the information from one source and that the Commission should clarify that the protected area around an earth station to refers to the existing 150 km circular zone as specified in section 90.1331(a) (47 CFR 90.1331(a)).

155. Google states that the registration requirements are reasonable and asks that the Commission reject SIA's request to eliminate this requirement. Google notes that the Citizens Broadband Radio Service rules are designed to protect actual users and that the annual registration requirement achieves this objective. Google contends that SIA concedes that the basic technical information required by the registration is necessary to calculate interference protection, and argues that the earth station operators themselves are in the best position to provide such information. Google also requests that the Commission clarify that the registration requirement applies to grandfathered earth stations in the 3650–3700 MHz band.

156. Discussion. We deny SIA's request to eliminate the annual FSS earth station registration requirement. However, we do make minor modifications to the existing rules governing earth station registrations. Specifically, we adopt changes to effectively implement the FSS earth station protection rules described in section IV(C) and further clarify that the registration rules apply to FSS earth stations in the 3650–3700 band after the transition period for Grandfathered Wireless Broadband Licensees. Management of sharing in a dynamic environment between three tiers of users requires as much accurate information as possible about the operation in each tier. In addition, as detailed in section IV(C), to provide additional protection for licensed C-Band FSS earth stations with TT&C responsibilities, we will allow these licensees to register for additional protection around these sites (47 CFR 96.17). Operators of these sites must provide the same registration information as in-band FSS earth station licensees seeking protection (47 CFR 96.17(d)) and, additionally, must affirm that each site is being used for TT&C.

157. We decline SIA's requested changes and reaffirm our findings in the *3.5 GHz R&O.* As stated in the *3.5 GHz R&O,* we adopted registration rules in order to ensure that the Commission and SAS Administrators have the accurate, up to date information necessary to protect incumbent licensed FSS earth stations (47 CFR 96.17(d)). In order for the SAS to adequately protect FSS incumbents, it must be able to access detailed information on the technical and operational characteristics of each FSS earth station seeking protection. If these characteristics change, the operator must update the relevant registration.

158. Several parties indicated that the rules were unclear regarding how they apply to existing FSS earth stations in the 3650–3700 MHz band. Section 96.21 (47 CFR 96.21) of the Commission's rules states that the existing protection criteria or in-band FSS earth stations in the 3650–3700 MHz band in part 90 of the Commission's rules (*i.e.,* 150 km coordination zones around each earth station) (47 CFR 90.1331(a)) would remain in place "until the last Grandfathered Wireless Broadband Licensee's license expires within the protection area defined for a particular grandfathered FSS earth station" (47 CFR 96.21(c)). Thereafter, such earth stations would be protected under section 96.17 (47 CFR 96.17) using the same criteria applicable to "similarly situated earth stations in the 3600–3650 MHz band" (47 CFR 96.21(c)). We hereby modify the rules to clearly state that, after the expiration of the part 90 protection criteria, as set forth in section 96.21 (47 CFR 96.21), grandfathered FSS earth station licensees operating in the 3650–3700 MHz band will be permitted to register for protection under the same terms applicable to FSS earth station licensees in the 3600–3650 MHz band (section 96.17(a)(1)).

159. We agree with Google and WISPA that the SAS must have access

to accurate and up-to-date technical information in order to adequately protect licensed FSS earth stations. Operators must update the registration if this information changes so that the SAS is able to consistently verify this information to provide ongoing protection to individual sites. As we stated in the *3.5 GHz R&O,* and noted by Google, the annual registration requirement allows us to balance the protection of incumbent FSS earth stations and greater Citizens Broadband Radio Service spectrum utilization instead of relying on a one-size-fits-all approach using worst-case interference assumptions. This aligns with the over-arching goal of protecting actual use in the 3.5 GHz Band to maximize capacity and coexistence of all users for the most efficient use of the band.

160. We disagree with SIA's assertion that the registration requirement is overly burdensome and imposes unnecessary obligations on satellite providers. First, we agree with Google that operators are in the best position to supply accurate information to the Commission. Second, as SIA itself notes, earth station operators already provide much of this information to IBFS. As such, providing that information along with additional necessary information on the operational characteristics of FSS earth stations not included in IBFS, should not present a significant burden to FSS licensees but is critical for SAS Administrators to effectively perform their duties. We also note that registration requirements are not unique to earth station operators. Registration of operational features is a key means of managing interference in a shared use regime. Indeed, all Citizens Broadband Radio Service user must register the operational characteristics of their CBSDs prior to commencing operation and upon making changes to any operational parameters of their base stations (47 CFR 96.23(b), 96.33(b), 96.39(c)).

161. We also confirm that FSS earth station registration—and the protections it confers—do not extend to unlicensed in-band or out-of-band FSS earth stations. SIA presents no argument that would compel the Commission to take the extraordinary step of protecting unlicensed sites from interference from licensed services.

162. Finally, in regard to SIA's request that we clarify the registration deadline, we note that the Commission directed WTB to release a public notice describing the registration process. In a June 2015 public notice, WTB announced that it would release this public notice in "early 2016." We direct WTB to include the annual filing deadline in this public notice.

IV. Second Report and Order

163. With this Second R&O, we address the three issue areas raised in the *Second FNPRM.* The *Second FNPRM* sought comment on how to: (1) Define "use" by Priority Access Licensees; (2) effectively facilitate secondary market transactions in the band; and (3) effectively protect in-band FSS earth stations and C-Band FSS earth stations.

A. Defining "Use" of PAL Frequencies

1. Background

164. In the *3.5 GHz R&O,* we determined that allowing opportunistic access to channels not being used by Priority Access Licensees would serve the public interest by maximizing the flexibility and utility of the 3.5 GHz Band for the widest range of potential users. When PALs have not been issued (*e.g.,* due to lack of demand) or the spectrum is not actually in use by a Priority Access Licensee, the SAS will automatically make that spectrum available for GAA use on a local and granular basis (47 CFR 96.25(c)). On multiple occasions prior to the *3.5 GHz R&O,* we sought comment on this "use-it-or-share-it" concept. While there was broad support in the record for some form of opportunistic GAA use, the record diverged greatly as to the proper methodology for defining and implementing a "use-it-or-share-it" framework. Therefore, in the *Second FNPRM,* we sought focused comment on particular options for defining "use" by Priority Access Licensees. Specifically, we sought comment on whether we should adopt an engineering definition, an economic definition, or a hybrid definition and how any such approach should be implemented.

165. Several commenters advocated approaches that would rely on an engineering-based definition of "use" to allow GAA access when frequencies are not being used by Priority Access Licensees while protecting the areas actually utilized by such licensees. We asked proponents of an engineering definition of "use" to submit a detailed description of their methodology along with technical criteria and metrics that could be readily implemented by multiple SASs. We also asked them to address potential issues with the engineering approach, including: (1) Whether utilizing a vacant PAL channel as a guard band should constitute "use;" (2) how to prevent gaming the "use-or-share" rules; and (3) whether an equitable approach to calculating aggregate interference can be implemented across multiple SASs.

166. An alternative approach is to define "use" from an economic perspective for the purposes of determining GAA access to unused spectrum. William Lehr, an economist at the Massachusetts Institute of Technology, argued that the Commission should "view the PAL as an option to exclude GAA usage. PAL licensees would acquire the right to exclude GAA access." Under this approach, actual operation as a Priority Access Licensee would not be the trigger for excluding GAA use. Rather, the price paid by a Priority Access Licensee at auction would be divided into two parts. The first payment would be made after the licensee acquires its PAL at auction. After that, the licensee would have the right, but not the obligation, to exercise its option to exclude GAA access from the PAL by making a second payment. We sought comment on this approach and asked commenters to address potential issues with the economic approach, including: (1) Whether the framework would encourage hoarding of PALs; (2) how payments should be apportioned between the initial payment and the option "strike" price; and (3) how the economic approach would fit in with the Commission's auction authority and its prior experience conducting auctions. We also sought comment on whether a hybrid approach incorporating elements of the engineering and economic models would be preferable.

167. Most commenters argue that the Commission should not adopt an economic definition of use and should, instead, implement some form of engineering-based approach. Commenters, including the Dynamic Spectrum Alliance, Federated Wireless, Google, the Information Technology Industry Council, Microsoft, Sony and WISPA specifically argue against the adoption of the economic approach. Google argues that, because an economic definition places no obligation on the Priority Access Licensee to actually deploy equipment or provide service in an area where it exercises its option to exclude GAA users, it would encourage licensees to bid on spectrum that they have no intention of using and increase the risk of warehousing. Federated Wireless and Microsoft argue that an economic definition of use will allow Priority Access Licensees to hoard spectrum and exclude legitimate GAA users. Sony contends that the economic approach would be inefficient and difficult to implement and would increase

uncertainty for GAA users. On the other hand, Key Bridge expresses enthusiasm for the economic approach and argues that the Commission should pursue a hybrid model that incorporates some of the ideas put forth by William Lehr.

168. AT&T, CTIA, and Qualcomm argue for a definition of "use" that is not, strictly speaking, an economic or engineering approach. According to AT&T and Qualcomm, GAA use should only be allowed on channels assigned to a Priority Access Licensee until that Priority Access Licensee begins providing service or informs an SAS that it will be using the channel(s) in its Service Area. AT&T contends that a "bright line rule", whereby GAA users are foreclosed from accessing spectrum once a Priority Access Licensee begins to offer service in a census tract is necessary to provide certainty to potential licensees and encourage investment in the band. CTIA agrees, arguing that both economic and engineering models would create uncertainty in the PAL marketplace, burden investment, and delay efficient use of the 3.5 GHz Band.

169. Verizon and WinnForum argue that the best way to ensure quality of service and promote investment is for Priority Access Licensees to directly input their coverage contours into an SAS. According to Verizon, it is impossible for third parties to divine—and to design interference protections that respect—each Priority Access Licensee's specific uses and network configuration. Verizon also asserts that Commission oversight could prevent operators from seeking protection for overlarge areas and that legitimate operator-defined "use" should include guard bands and reserve channels. According to Verizon, the Commission should accord Priority Access Licensees a rebuttable presumption that their coverage area showings are appropriate. WinnForum agrees with the proposal to allow operators to self-define their protected coverage areas.

170. Google argues that the Commission should adopt an engineering-based definition of use based on actual deployment conditions that would be implemented and enforced by the SAS. Google contends that Priority Access Licensees should be permitted to register their own protected coverage areas within their Service Areas and that Priority Access Licensees should be permitted to agree to alternative protection limits and communicate such agreements to the SAS. According to Google, PAL protection areas should be supported by engineering analysis of actual operations and that documentation of such analysis should be submitted by the Priority Access Licensee at the time that the protection is requested.

171. Google elaborated on its arguments and provided examples of a proposed methodology in a February 2016 ex parte letter. In that letter, Google argues that, to confirm that the protection requested by Priority Access Licenses is based on reasonable technical considerations, the Commission should require all Priority Access Licensee coverage area claims to be measured against maximum service areas calculated by an SAS. Google also asserts that, to ensure that reasonable assumptions are used, SASs should be required to demonstrate that the methodology used in calculating claimed coverage areas is consistent with the methodology used to calculate protection areas for Incumbent Access users and other Priority Access Licensees in the band.

172. Federated Wireless contends that utilizing an engineering definition is consistent with the goals set forth by the Commission and is technologically feasible. Under Federated Wireless's proposal, SASs, using data provided by Priority Access Licensees, would define a protection boundary, or protected service contour, around active CBSDs authorized to operate on a Priority Access basis. The SAS, in turn, would prohibit GAA user access to channels used by Priority Access Licensees where the corresponding interference threshold to the CBSDs in the protected boundary is exceeded. While Federated Wireless agrees with Google and Verizon that Priority Access Licensees are in the best position to determine where their operations are, they do not state a preference between the methodologies proposed by those two entities.

173. Others, including Interdigital OTI/PK, the Wi-Fi Alliance, and WISPA argue for an engineering definition that incorporates both geographic and temporal elements to ensure that GAA use is only foreclosed when CBSDs are in active use. WISPA and OTI/PK argue that the Commission should require SAS administrators to calculate service contours using the reported technical parameters and geo-location of registered CBSDs. WISPA contends that the Commission should consider a PAL channel to be in use whenever it has received 300 or more end-user data packets within a five-minute interval. Wi-Fi Alliance argues that the definition of "use" should be based on actual transmission or reception of radio signals and, specifically, that "[u]nless there is a current report that radiofrequency (RF) energy is being actively transmitted or received on PAL channels, those channels should be available for GAA use." OTI/PK agrees that the that the Commission should incorporate a temporal element of use that would prevent licenses from permanently foreclosing GAA access in a given geographic area for temporary or transient Priority Access uses such as pre-deployment network testing and notes that it believes that WISPA's methodology is technologically feasible.

2. Discussion

174. We find that a consistent, SAS-based engineering approach to determining when channels assigned to Priority Access Licensees are "in use" will maximize the flexibility and utility of the Citizens Broadband Radio Service and promote widespread deployment of broadband services in the 3.5 GHz Band. Specifically, we adopt a two pronged approach to determining "use" by Priority Access Licensees. First, Priority Access Licensees may report their PAL Protection Areas on the basis of their actual network deployments. Second, to establish an objective maximum PAL Protection Area, the SASs will use a consistent model to define a default −96 dBm/10 MHz protection contour (47 CFR 96.25). We find that the two pronged approach provides licensees with the flexibility to self-report their protection areas while also providing an objective maximum. Further, we find that utilizing SASs to determine default protection contours around registered CBSDs that are authorized to operate on a Priority Access basis will provide an effective baseline protection criteria for Priority Access Licensees while allowing GAA users reasonable opportunities for additional access to the band. Default protection contours must be based on common inputs and engineering assumptions to ensure consistent results across SASs.

175. In addition, we encourage Priority Access Licensees, working with SAS Administrators, to restrict their PAL Protection Areas to less than the −96 dBm/10 MHz default protection contour to reflect the actual needs and capabilities of their particular networks (within the boundaries defined by the default protection contours) to increase spectrum availability and further promote flexible use of the band and to self-report these contours to an SAS. We expect that, through ongoing technological innovation and industry collaboration, the default protection contours will be further refined in the future. As described in section III(G), SASs will also protect the PAL Protection Areas from aggregate interference from Priority Access and

GAA CBSDs using common assumptions and modeling that we will review during the SAS approval process. The PAL Protection Areas will be enforced by the SAS for registered CBSDs authorized to operate pursuant to a PAL.

a. Importance of Opportunistic Spectrum Access

176. In the *3.5 GHz R&O,* we found that permitting opportunistic access to unused Priority Access channels would maximize the flexibility and utility of the 3.5 GHz Band. We also found that, by allowing GAA users to access bandwidth that is not actually in use by Priority Access Licensees, we would ensure that the band will be in consistent and productive use. We hereby reaffirm these findings and confirm that promoting flexible access to the 3.5 GHz Band for a diverse group of users is in the public interest.

177. Consistent with these findings, we conclude that the proposals made by AT&T, CTIA, and Qualcomm regarding the definition of "use" are inconsistent with the Commission's goals for the band. AT&T, CTIA, and Qualcomm argue that the Commission should define a geographic area as "in use" whenever a Priority Access Licensee notifies an SAS of its intent to operate in a given area. They argue that this approach is needed to provide potential Priority Access Licensees with the regulatory certainty needed to invest in PALs and provide service in the band. As Federated Wireless and WISPA correctly note, these approaches are not actually engineering definitions of use and are directly contrary to the purpose of the Commission's rules. As we stated in the *3.5 GHz R&O* and reiterated in sections I and III(A) above, the Citizens Broadband Radio Service rules are designed to facilitate shared—rather than exclusive—access to the 3.5 GHz Band. Adopting rules that would allow a Priority Access Licensee to foreclose access to its entire Service Area (or even a single census tract) with nothing but a notification of its intent to provide service—or transmission of an initial signal—would over-protect Priority Access Licensees, facilitate spectrum warehousing, and encourage inefficient use of spectrum resources. We believe that the "use it or share it" approach of our rules for this unique band also thus more reasonably accommodates the goals of section 309(j) of the Act, including "to prevent stockpiling or warehousing of spectrum" (47 U.S.C. 309(j)(4)(B)).

178. Moreover, contrary to the assertions made by AT&T, Qualcomm, and CTIA, we believe that adopting a true shared access model based on sound engineering principles will encourage investment in the band. A diverse group of commenters, including Google, WinnForum, Federated Wireless, WISPA, Microsoft, OTI/PK, and Verizon have submitted filings indicating support for some variation of a true "use or share" model based on engineering principles.

179. We also agree with the diverse group of commenters that contend that an economic approach to defining "use" would not promote the most efficient use of the 3.5 GHz Band. We believe that shared access to the 3.5 GHz Band should be grounded in sound engineering principles to ensure that spectrum resources are equitably assigned between and among various users. However, we note that economic approaches may warrant further study and we encourage interested parties to continue to examine how such economic models may be applied towards spectrum sharing in the future.

b. Contour-Based Engineering Model

180. Many commenters support some form of engineering-based methodology for determining whether channels assigned to Priority Access Licensees are actually "in use" in a given geographic area. We agree and find that a methodology based on sound, commonly applied, engineering principles will best ensure appropriate protection for Priority Access Licensees and equitable access to spectrum for GAA users while discouraging warehousing of spectrum resources. Several commenters also argue that Priority Access Licensees should have the flexibility to build and design their networks and to report the contours they need protected to the SAS. The approach we adopt incorporates both concepts by allowing Priority Access Licensees to report their network contours on the basis of their actual network deployments while also defining an objective default protection contour around CBSDs operating on a Priority Access basis.

181. Self-Reporting by Priority Access Licensees. While we agree with Federated Wireless, Verizon, and WinnForum that Priority Access Licensees are uniquely positioned to determine their own network needs and communicate those needs to the SAS, we also believe that it is in the public interest to encourage stability and predictability in determining protections for CBSDs operating on a Priority Access basis and to maximize spectral efficiency by ensuring that all unused spectrum is available for GAA. Therefore, we will allow Priority Access Licensees to report their protection contours on the basis of the network deployment, so long as they are within the boundaries established by the objective default protection contour. A predictable and consistent approach to defining the maximum reach of PAL Protection Areas is important for network planning purposes and to ensure that all SASs protect Priority Access Licensees consistently and allow GAA users equitable access to unused channels. Priority Access Licensees are encouraged to work with SAS Administrators to tailor their self-reported PAL Protection Areas to their particular needs within the boundaries defined by the default protection contours. This approach will provide flexibility to Priority Access Licensees while also creating an objective means of determining a maximum protection contour and minimizing the risk that Priority Access Licensees might claim protections beyond the extent of their actual network deployments.

182. Under a system relying on pure self-reporting, we are concerned that Priority Access Licensees would be effectively encouraged to deploy their networks inefficiently and seek protection for extremely low signal levels or in areas without facilities that are in actual use. We agree with Public Knowledge, OTI/PK, and WISPA that allowing Priority Access Licensees to self-define their network parameters without reference to a common set of engineering assumptions is likely to encourage warehousing and disincentivize efficient spectrum use. Under such a system, Priority Access Licensees would have no reason to deploy facilities or define their network parameters in a manner that would encourage sharing with GAA users.

183. On the other hand, it is our hope that the approach we adopt herein will encourage Priority Access Licensees to use their unique knowledge of their own networks—in collaboration with SAS Administrators—to craft more tailored protection contours within the bounds of the default protection contours defined in section 96.25 that will encourage more spectral reuse by both Priority Access Licensees and GAA users (47 CFR 96.25). For example, we believe that a variety of economic factors will incentivize Priority Access Licensees to self-report their protection contours so as to limit them to areas of actual use (*i.e.,* to contours smaller than default contours). Specifically, it would be in the interest of the licensee not to overstate its PAL Protection Area to the extent that it plans to take advantage of the newly established secondary markets rules for this band. Claiming a

smaller protection area would make more area available to lease on the secondary market, as described in section IV(B). Our rules do not permit a PAL licensee to lease its spectrum in areas where it asserts actual use of the spectrum, *i.e.*, within its PAL Protection Area (47 CFR 96.32). Thus, by reducing the size of its PAL Protection Area, the licensee could signal to potential lessees that a significant portion of its Service Area is available for lease, on a short or long term basis, which could provide a greater financial benefit to this licensee than would be possible with a larger PAL Protection Area. In addition, a Priority Access Licensee that accepts a protection contour that is larger than needed to protect its operations could limit the ability of GAA users to access what is essentially an unused portion of the Service Area and, in turn, contribute to a collective action problem in which Priority Access Licensees and GAA users have little incentive to cooperate with each other. To the extent that a Priority Access Licensee also intends to make use of spectrum on a GAA basis, either within its Service Area or elsewhere, it is in the interest of that Priority Access Licensee not to seek to establish larger protection areas than needed, because establishing such protection where it is not needed may well encourage other Priority Access Licensees to do likewise. Nevertheless, we plan to monitor the operation of our rules in this novel sharing environment, to ensure that spectrum is utilized efficiently.

184. We also note that Priority Access Licensees may alter their reported PAL Protection Areas freely throughout their license term. As set forth herein, PAL Protection Areas are reported or calculated based on the registered characteristics of a Priority Access Licensee's active CBSDs and, as such, they may change depending on the licensee's network deployments or business decisions.

185. Default Protection Contour Boundaries. The default protection contour will be defined and modeled by the SAS as a −96 dBm/10 MHz contour around each CBSD operating on a Priority Access basis. If the contours modeled around each individual CBSD overlap, the SAS will combine them into a single contour boundary. The precise shape of the contour will be modeled by the SAS using the characteristics of CBSDs provided pursuant to sections 96.41, 96.43, and 96.45 of the Commission's rules and commonly applied technical assumptions as determined during the SAS Approval Process (47 CFR 96.41, 96.43, 96.45). The default protection contour is the outer limit of the maximum area that any Priority Access Licensee may claim as its PAL Protection Area. Any area within the PAL Protection Area will be protected from interference from other CBSDs, consistent with section 96.41(d) (47 CFR 96.41(d)). To ensure consistent protection, the default protection contours and, by extension, the maximum PAL Protection Areas, must be consistent across all SASs.

186. While the Commission's rules are technologically neutral, we believe that, given the likely uses of the 3.5 GHz Band, it is appropriate to use a reasonable reference sensitivity for LTE technologies as the basis for the modeled default protection contours. For example, 3GPP has defined two LTE bands that overlap the 3.5 GHz band, Band 42 from 3400 MHz to 3600 MHz, and Band 43 from 3600 MHz to 3800 MHz. For both of these bands, the reference sensitivity in a 10 MHz bandwidth is −96 dBm indicating that below this value the signal becomes too weak relative to the noise floor for adequate reception. Thus, we find that defining the default protection contour by reference to a signal strength of −96 dBm/10 MHz is appropriate for existing and expected use cases, technologies, and network deployments in the band.

187. We believe that this level of protection is appropriate for the types of dense, relatively low power deployments that we expect in the band. Equipment in such deployments typically operate at levels above those defined in the standard and we expect that to hold true here too. Thus, using a default protection contour referenced to −96 dBm/10 MHz offers a degree of protection sufficient to protect the most common likely use cases in the band without over-protecting Priority Access licensees to an unreasonably low signal level and thereby precluding GAA use of the spectrum. Moreover, we believe that a contour referenced to −96 dBm/10 MHz is technologically neutral and will provide appropriate protection for a variety of current and future technologies. Given the unique licensing model used for PALs (*e.g.*, short term licenses, no renewal expectancy, census tract license areas, no specific build out requirements) and the technical interchangeability of GAA and Priority Access authorizations, we believe that this approach to determining Priority Access use will effectively discourage warehousing and ensure that Priority Access Licensees receive protection only in areas that are in active use.

188. Calculation of Default Protection Contours. While we do not mandate a specific propagation model to determine the default protection contour, we do believe that it is in the public interest to ensure that all SASs operate from a common set of assumptions and methodologies for determining the default protection contours. Operating from a common set of assumptions and a common propagation model will provide a predictable interference landscape for potential licensees, encouraging rapid deployment of network elements and promoting investment in the band. Moreover, we believe that, at this time, these assumptions should be as simple and easily implementable as possible to promote rapid deployment in the band. These assumptions and methodologies will be reviewed—and common models and assumptions will be approved—by WTB and OET as part of the SAS approval process. We expect that the assumptions and the implementation within SASs will evolve over time to build off of the collective learned experience and expertise of SAS Administrators and Priority Access Licensees. WTB and OET will review revised approaches and assumptions as they are developed.

189. WTB and OET will consider the consistency and ease of implementation of proposed methodologies when reviewing proposals from prospective SAS Administrators. As such, we encourage prospective SAS Administrators to consider proposing a simple, easily implementable model (*e.g.*, Cost–231, NTIA model, extended HATA). The end-result of any model should be a simple contour that is more realistic than models that rely on worst case assumptions (such as free space path loss) or worst case parameters (such as assuming all CBSDs are at the maximum allowed height and power). The model may be updated or modified in the future—after review by WTB and OET—as new data is collected from actual deployments in the band.

190. This approach to propagation, terrain, and clutter modeling is consistent with the approach adopted in section IV(C)(1)(d) for protection of FSS earth stations and general propagation determinations. At this time, we believe that allowing SAS Administrators to adopt proprietary approaches to propagation, clutter, and terrain modeling for purposes of determining default protection contours would be overly complex and would lead to inconsistent—and possible contradictory—results. A simple, easily implementable model applied across all approved SASs is in the public interest as it is more likely to promote robust, rapid investment in the band.

191. It is important to note that the assumptions and modeling methodologies that are approved as part of the SAS approval process are only the first step of an iterative process. We expect to further refine these models based on the real-world experiences of SAS Administrators and Citizens Broadband Radio Service users. We encourage Priority Access Licensees, GAA users, SAS Administrators, and other interested stakeholders to work collaboratively to improve the initial default protection contours and leverage their technological capabilities to develop revised sharing models over time. Such improvements may be implemented at a later date.

c. Temporal Criteria

192. We will require the SAS to enforce the PAL Protection Areas, consistent with section 96.25 and 96.41(d). We believe that the public interest will be best served by ensuring that all such CBSDs are protected so long as they continue to operate under a PAL but that the SAS should not be responsible for ensuring that CBSDs are actually transmitting at any specific time. Thus, we require that, if a CBSD ceases to operate on a Priority Access basis—or discontinues service for more than seven days—it must inform the SAS of this change in status and the SAS must alter the PAL Protection Area accordingly. If a CBSD discontinues service and is later reactivated on a Priority Access basis, the SAS must expeditiously re-establish the PAL Protection Area around that CBSD (47 CFR 96.39(c)(2)).

193. Pursuant to section 96.39(c) of the Commission's rules, a CBSD must register with and be authorized by an SAS prior to its initial service transmission and must update the SAS if any registration information changes (47 CFR 96.39(c)(2)). Registration information must include the requested authorization status (GAA or Priority Access) for each CBSD (47 CFR 96.39(c)(2)). We also require all CBSDs to inform the SAS of any changes in operational parameters or registration information, including requested authorization status (47 CFR 96.39(c)(2)). In addition, to ensure that only operational Priority Access authorized CBSDs are protected, we adopt a new rule that requires each CBSD to inform the SAS if it will cease providing service on a permanent basis and requires the SAS to discontinue the PAL Protection Area for any CBSD that does not contact the SAS for more than seven days (47 CFR 96.25(c)(1)(ii)). As OTI/PK correctly argues, without some requirement limiting protections for registered Priority Access CBSDs to periods of actual use, Priority Access Licensees may be incentivized to deploy CBSDs as "license savers" to foreclose GAA use in areas without active service. We agree with OTI/PK that CBSDs "regularly contact the SAS and provide (or could provide) basic information on whether they are actively transmitting." Thus, the notification requirement is wholly consistent with our stated goal of protecting the actual service contours of Priority Access Licensees and making unused spectrum available for GAA use.

194. While we agree with OTI/PK, Wi-Fi Alliance, and WISPA that it is important to ensure that CBSDs are only protected from interference when they are in actual use, we do not believe that implementing a technical methodology to measure active use is necessary or appropriate. The proposals put forth by Wi-Fi Alliance and WISPA—and supported by OTI/PK—would require the SAS to affirmatively track data packets or active RF transmissions on individual CBSDs and allow GAA access whenever the benchmarks for active transmission are not met. If implemented, such a requirement would place a significant new burden on SAS Administrators, increasing the technological complexity of the SAS, and complicating enforcement and oversight for the Commission. Even if the level of oversight envisioned by WISPA and Wi-Fi Alliance is technologically viable, we believe that providing SAS Administrators with a higher level of granular oversight over individual CBSDs would hinder investment in PALs and disincentivize widespread deployment in the band. Moreover, WISPA and Wi-Fi Alliance's proposals would not actually prevent warehousing or the deployment of "license-saver" CBSDs since any CBSD could simply be directed to transmit null data packets at intervals sufficient to satisfy the proposed requirements.

195. We also disagree with those commenters that argue that Priority Access Licensees should be permitted to reserve portions of the band (by time, frequency, or geography) as "guard bands." While we acknowledge that such guard bands could offer additional protection for Priority Access Licensees, we do not believe they are necessary in light of the technological and regulatory features implemented in this band. Moreover, allowing guard bands would run counter to the Commission's goals for equitable shared use of the 3.5 GHz Band. As we stated above, the three-tier authorization framework is designed to facilitate true, shared access to the band between and among a wide variety of users. Foreclosing access to an unused portion of the band as a protective measure does not advance these goals and, indeed, would be likely to encourage warehousing and inefficient spectrum utilization by Priority Access Licensees.

196. Our approach to temporal sharing appropriately balances the need to provide a degree of certainty for prospective Priority Access Licensees and the need to ensure that portions of the 3.5 GHz Band are made available for GAA users whenever frequencies are not actually utilized by higher tier users. In addition, consistent with our usual policies, the rules place the responsibility for accurately reporting use—and the associated penalties for non-compliance—on Priority Access Licensees. We believe that this approach will encourage investment in both the Priority Access and GAA tiers, facilitate efficient and widespread spectrum use, and promote innovation in the 3.5 GHz Band.

d. Congestion Metric and Advanced Planning

197. In the *3.5 GHz R&O,* we noted that, as technology develops, advanced techniques such contention-based protocols, "congestion metrics," and other advanced techniques could be used by the SAS to coordinate power levels in high-density areas among GAA users. We noted that we intend to continue an informal dialog with stakeholders on these topics and suggested that such approaches might be appropriate areas of work for a multi-stakeholder group. Federated Wireless contends that such a "congestion metric" could "be used to define the conditions to which the SAS will manage GAA uses to ensure a consistent level of service can be achieved as congestion occurs." Federated Wireless suggests that such techniques could be used to ensure that a definition of use based on aggregate interference criteria does not cause unfair treatment to GAA users and that specific techniques should be developed by a multi-stakeholder group. Federated also suggests that technologies that employ contention-based protocols or other mechanisms to enable coexistence could help to facilitate equitable use of the band by GAA users.

198. The Commission has consistently emphasized the importance of ensuring that GAA users have consistent, equitable access to the 3.5 GHz Band. We are pleased that industry stakeholders continue to work towards the development of innovative approaches to the issue of GAA co-existence. We encourage these efforts—by both independent actors and multi-

stakeholder groups—and encourage interested parties to continue to inform us of new developments. We also direct WTB and OET to review any approaches to GAA coexistence submitted as part of the SAS approval process.

B. Secondary Markets

1. Background

199. In the FNPRM we sought comment on appropriate secondary market rules for the 3.5 GHz Band. Many commenters addressed secondary markets issues and generally supported a framework that would allow secondary market transactions involving PALs.

200. In the *Second FNPRM,* we sought comment on specific aspects of the secondary markets rules and requested detailed proposals for implementing any required rule changes. In particular, we requested comment on any necessary changes to our Part 1 rules to facilitate the development of a secondary market for PALs in the 3.5 GHz Band. Notably, we asked whether partitioning and disaggregation of PALs should be permitted and sought comment on the costs and benefits of allowing such transactions. We also sought comment on the potential use of spectrum exchanges to facilitate the transfer of PALs in the secondary market and whether such exchanges should be mandatory or could be allowed to develop voluntarily under current rules. Finally, we sought comment on the legal, technical, and logistical issues that should be considered, particularly in regard to modifications to our rules that could reduce transaction costs and allow increased automation of transfer and lease applications.

201. We also sought comment on the application of our spectrum aggregation limits for Priority Access Licensees, both in the context of secondary markets and in the context of initial licensing of PALs, and we inquired as to how the unique characteristics of PAL auctions should be taken into account. Further, we asked whether we should apply the attribution standard used in our existing rules to transactions involving mobile wireless licenses for commercial use, and we inquired how this standard could reflect the need for a streamlined process, potentially through a database administrator, for transactions involving PALs (47 CFR 20.22).

202. Several commenters responded to these questions with a variety of suggested approaches to secondary markets rules for the Citizens Broadband Radio Service. There is near uniform support in the record for allowing access to the 3.5 GHz Band through secondary markets. Commenters including AT&T, CTIA, Federated Wireless, Google, Information Technology Industry Council, PCIA, Rajant, Verizon, WinnForum, and WISPA agree that permitting access to PAL spectrum through secondary markets will increase flexibility and encourage efficient use of spectrum in the 3.5 GHz Band. AT&T further argues that flexible secondary markets will promote investment and innovation in this band. Most commenters urge the Commission to apply its secondary markets rules to the 3.5 GHz Band, and some go further, recommending that the Commission apply a more streamlined and flexible system to allow secondary use of PAL spectrum, instead of its traditional secondary market rules. Verizon, for example, advocates forbearance from prior approval of PAL leases (and also license transfers) under section 310(d) of the Communications Act (47 U.S.C. 310(d)). Similarly, Federated Wireless argues that permitting access to PAL spectrum on the secondary market "does not warrant formal Commission approval any more than does opportunistic GAA use of PAL spectrum." Rajant points out that there is inherent liquidity due to the nature of the PALs, in particular due to their short license terms and small geographic areas, and that establishing a streamlined process to allow access to secondary markets will bolster this liquidity.

203. Only Microsoft and the Wi-Fi Alliance state that a secondary market is unnecessary and potentially contrary to the public interest. They both state that the SAS will enable GAA access to PAL spectrum that is not in use, obviating the need for secondary markets in this band. Microsoft further argues that allowing a secondary market will encourage companies to speculate on PALs, profiting by obtaining more PALs than they need in order to make this spectrum available in the secondary market. Both Key Bridge and Cantor Telecom address this concern, stating that given the short license terms, small geographic coverage areas and ample availability of GAA spectrum, it would be nearly impossible for licensees to speculatively warehouse spectrum.

2. Light-Touch Leasing for Priority Access Licensees

a. Background

204. Key Bridge and Federated Wireless both state that the existing spectrum leasing procedure is designed for traditional wireless service in traditionally licensed bands, which does not apply to the 3.5 GHz Band, particularly since any number of GAA users can access and share unused PAL spectrum. Federated Wireless and Rajant both state that certain entities need the assured use of protected PAL spectrum for only a short period of time, such as for a special event, to provide service to targeted areas, such as transit rail lines and venues. Spectrum Bridge argues that the time and expense associated with the Commission's traditional approach to transaction review in other licensed bands would make it difficult or impossible for a secondary market to develop in the 3.5 GHz Band.

205. A number of commenters endorse a spectrum leasing procedure similar to the one suggested by Federated Wireless whereby the Commission would first formally certify lessees to use PAL spectrum and then upon entering a leasing arrangement with a PAL, the licensee would notify the SAS, rather than obtaining prior approval by the Commission for each PAL secondary market transaction. Federated Wireless suggests a standardized electronic certification process could be established so that PAL licensees can provide users with electronic consent, perhaps with a secure verification key or certificate, and the user can then submit the electronic consent and verification key to the SAS. Cantor Telecom states that a precertification process permitting rapid trades in the secondary market will result in significant efficiency, which is especially beneficial given the tremendous number of potential PALs available over more than 74,000 census tracts.

206. Both Google and Federated Wireless state that the SAS can easily manage secondary use of PAL spectrum without extra complexity, as SASs will be designed and scaled to manage many thousands of PAL and GAA assignments and deployments. Key Bridge suggests that the SAS can help ensure transactions do not raise public interest risks.

207. Rajant and WISPA support a notice-only process. Rajant describes how certain entities need the assured use of PAL spectrum and argues that a notice-only process will most effectively allow such service to emerge in a secondary market. WISPA states that by requiring notification to the SAS and not the Commission, the agency would have very few administrative burdens.

208. Key Bridge and Cantor Telecom suggest that the Commission assign all unsold PALs to the secondary market for resale. Key Bridge argues that reverting unsold PALs to GAA use creates artificial scarcity and starves the

secondary market. Instead, Key Bridge states, the Commission could foster economic innovation through a single auction that will enable commercial operators of all size and type to innovate at their own pace. Cantor Telecom supports a similar approach but suggests that the PAL remain available for GAA use until acquired on the secondary market.

b. Discussion

209. We believe there are significant benefits to a robust secondary market for PAL spectrum. While our existing part 1 rules already provide for substantial flexibility in this regard, we amend those rules to include a streamlined spectrum manager leasing process, based on the current spectrum manager leasing rules, tailored for the PAL leasing context. We expect there will be a demand for Priority Access rights for a wide variety of use cases. We believe that a robust, flexible, and lightly regulated secondary market through these band-specific spectrum manager leasing rules will incentivize efficient spectrum use, promote innovation, and encourage the rapid deployment of broadband networks in the 3.5 GHz Band. We will also permit de facto transfer leasing under the existing part 1 rules.

210. The focus of our secondary markets policy for the 3.5 GHz Band will be to permit Priority Access Licensees to enter into a spectrum manager lease under the "light-touch leasing" regime we establish herein for any portion of their licensed geographic area for any bandwidth or period of time within the scope of the PAL but outside of its PAL Protection Area. We also believe that the principles underlying the streamlining of our rules for assignments and transfers of control, as well as for de facto transfer leasing, for licenses of other Wireless Radio Services (WRS), including our section 310(d) (47 U.S.C. 310(d)) forbearance determinations that enabled us to introduce significant streamlining into the approval process for such transactions involving WRS common carrier licensees, apply with even greater force here, given the relatively short license terms and small License Areas of PALs. We believe that further changes in our rules governing these types of transactions are not warranted at this time. Moreover, as noted below, in order to achieve a balance between promoting a significant amount of flexibility for PALs and enabling the Commission to adequately enforce its rules related to ownership and control, we decline to permit PAL licensees to engage in assignments, transfers of control, or de facto transfer leasing agreements that result in partitioning or disaggregation of their licenses in this band.

211. The light-touch leasing framework for PAL spectrum manager leases builds off the Commission's existing spectrum manager leasing rules and will provide Priority Access Licensees the ability to lease certain spectrum usage rights pursuant to a highly streamlined process, while also preserving the Commission's ability to fulfill its oversight and enforcement responsibilities. With respect to the Commission's ability to fulfill these responsibilities, we conclude that the immediate processing procedures under the existing spectrum manager leasing rules (set forth in section 1.9020(e)(2)) (47 CFR 1.9020(e)(2)) would present certain challenges due to the high numbers—often for very short-term durations—of spectrum manager leases that we expect to see in this service. Given the diverse range of deployments and services that the Citizens Broadband Radio Service is expected to support—coupled with the large number of PALs that we expect to issue and their relatively small License Areas—we see the potential for many thousands of leases in the 3.5 GHz Band. We expect that a significant percentage of these leases will cover a short period of time or even a single event. Under the existing immediate processing procedures, such transient lease terms would render any reasonable degree of Commission oversight exceedingly difficult to maintain during the lifetime of the lease. Therefore, to facilitate development of a robust secondary market, we believe that it is critical to employ a highly streamlined regulatory approach for handling the spectrum manager leasing process. In particular, given that PALs are limited to three-year, non-renewable license terms, it is clear that any sort of prolonged leasing process would be especially inefficient.

212. To address both the need for a streamlined process and the Commission's obligation to maintain its ability to fulfill its oversight and enforcement responsibilities, we are modifying the existing spectrum manager lease rules—which are designed for traditionally licensed, exclusive use bands—to create a process tailored to this band. Specifically, we are establishing a procedure, based on the immediate processing procedures in the Part 1 spectrum manager leasing rules, to permit parties contemplating spectrum manager lease agreements with Priority Access Licensees to submit the required, non-lease specific certifications to the Commission at any time prior to reaching a spectrum manager lease agreement with a Priority Access Licensee. Potential lessees must update their certification if any of the required information changes, including ownership information, and the Commission may request verification of any information contained in the certifications at any time. The Commission will process these certifications expeditiously in order to provide the SASs with confirmation that the future lessee meets the corresponding eligibility criteria for a spectrum manager lease. With this confirmation in hand, the SAS will be positioned to expeditiously complete a notification process for any spectrum manager lease involving that lessee and a Priority Access Licensee, once the licensee notifies the SAS of the leasing agreement. The SAS can then rapidly: (1) Confirm that the lessee meets the non-lease-specific basic qualifications criteria (as evidenced by the Commission's prior verification of this fact) and that the parties meet the lease-specific eligibility requirements; and (2) notify the Commission that the parties to the spectrum leasing agreement have satisfied the requirements for invoking the immediate processing procedures. Once the SAS provides that confirmation to the licensee and lessee, the lessee may immediately begin exercising leased spectrum usage rights under the lease agreement.

213. In sum, the lessee's ability to provide the required non-lease specific certifications to the Commission in advance for its future spectrum manager leases in this service, enables the lessee to take advantage of a similar form of expedited processing and use procedures offered under the section 1.9020(e)(2) (47 CFR 1.9020(e)(2)) spectrum manager leasing rules for other Wireless Radio Services, while ensuring that the lessee makes the necessary certifications with the Commission regarding its qualifications to enable the Commission to fulfill its oversight and enforcement obligations.

214. The following bullets highlight the essential elements of this light-touch process for Priority Access spectrum manager leases, and the discussion that follows provides additional details:

- The lessee must certify with the Commission that it meets the basic qualifications for holding a license authorization.
- The licensee must notify the SAS of the leasing arrangement.
- The SAS must be able to confirm that: (1) The lessee has provided the required certification to the Commission; (2) the lease will not

violate the 40 megahertz Priority Access spectrum aggregation limit for the given geographic area; and (3) the lease area is within the lessor's Service Area but outside of its PAL Protection Area.

- On a daily basis, the SAS will provide the Commission with an electronic report of the leasing notifications received from Priority Access Licensees.
- The Commission will release a weekly Public Notice listing the leasing arrangements.

215. Applicability of Existing Spectrum Leasing Rules to Priority Access Licensees. Priority Access Licensees may enter into spectrum manager leases in accordance with section 1.9020 (47 CFR 1.9020(e)(2)) of the Commission's rules, as amended in this order, and pursuant to the rules adopted herein. As required by section 1.9020 (47 CFR 1.9020(e)(2)), Priority Access Licensees must retain de facto and de jure control of the license. Under the de facto control standard, both Priority Access Licensees and their lessees must comply with all applicable Commission service and technical rules, and the Priority Access Licensee is "directly and primarily responsible for ensuring the spectrum lessee's compliance." The Priority Access Licensee remains responsible for all interactions with the Commission and must be the sole point of contact for such interactions.

216. Consistent with these requirements for retaining de facto control, the licensee will notify the SAS of any spectrum manager leasing arrangement and continue to be directly and primarily responsible for maintaining its own eligibility to hold a Commission license and for ensuring the lessee's compliance with Commission rules, including operation in conformance with applicable technical and use rules as well as the lessee's own eligibility. The SAS will function and communicate with CBSDs in the same manner it would in the absence of a lease. Thus, consistent with the rules governing CBSD authorization and coordination, the SAS will communicate directly with all CBSDs, regardless of whether they are operated by a licensee or lessee, thereby facilitating a lessee's compliance with technical and service rules and safeguarding other users. For example, if the SAS determines that a lessee's CBSD is causing interference, the SAS will relocate the CBSD to an unencumbered channel or deauthorize its operation without the need for licensee involvement.

217. As stated above, we will permit parties that contemplate becoming lessees in the 3.5 GHz Band to certify with the Commission in advance of entering into a leasing arrangement that they meet the basic qualifications for holding a license authorization (other than those qualifications that can only be determined on a license-specific basis), similar to the suggestions of Cantor Telecom and Federated Wireless. Basic qualifications that can be certified through this advance processing include, for example, the applicable foreign ownership eligibility criteria, character and other qualification requirements criteria applicable to the licensee, and eligibility under the Anti-Drug Abuse Act of 1988. Would-be lessees that already hold PALs will automatically be deemed to meet this requirement, as they have already demonstrated that they are qualified to be a Commission licensee. WTB will establish a process for entities that do not hold PALs to provide such certification to the Commission electronically and issue a Public Notice detailing this process. The Commission will maintain a publicly available list of all entities that have made the requisite advance certifications, and those listed parties may enter into leasing arrangements with Priority Access licensees and commence leased operations when the SAS provides the required confirmation. The foregoing approach balances the Commission's oversight obligations while still permitting an efficient leasing process that places lessees in a position to offer service upon confirmation from the SAS. This is particularly important given that multiple parties have expressed an interest in using secondary market transactions to acquire Priority Access spectrum rights for specific, time-limited events.

218. SAS Notification Procedure. Separate from the lessee's certification with the Commission, Priority Access Licensees will be required to submit the following information about each spectrum lease to any SAS that accepts leasing notifications: (1) Necessary information on the identity of the spectrum lessee (including necessary contact information) and its eligibility to lease spectrum as demonstrated by appearing on the certification list; (2) the specific spectrum leased (in terms of amount of bandwidth and geographic area involved), including the call sign affected by the lease; and (3) the length of the lease. The licensee must also certify that its ownership information is current and update its ownership information, if necessary. After the licensee has provided this information and the SAS has provided confirmation that the notification has been received and the lease meets the qualifications set forth in section 96.66 (47 CFR 96.66), the lessee may commence operations. This is consistent with our current practice of allowing immediate processing for certain spectrum manager leasing arrangements, while ensuring that the Commission has adequate time in advance of what may be very short-term event leasing to confirm that potential lessees are qualified under our rules. Leasing parties may extend the leasing arrangement beyond the initial term, by providing advance notification to the SAS, and they may terminate the arrangement early by providing notification to the SAS no later than ten days after the early termination.

219. The SAS Administrators must provide an electronic report of these notifications to the Commission on a daily basis. The Wireless Telecommunications Bureau will then issue a weekly informational Public Notice listing the leasing arrangements. As with all spectrum manager leases, the leasing notifications are subject to post-notification review by interested parties or the Bureau within 30 days, and by the Commission within 40 days. As under our existing spectrum manager leasing rules, the Commission retains the right to investigate and terminate any such leasing arrangement if it determines, post-notification, that the arrangement constitutes an unauthorized transfer of de facto control, is otherwise in violation of the Commission's rules, or raises foreign ownership, competitive, or other public interest concerns.

220. SAS Responsibilities Regarding 3.5 GHz Band Spectrum Manager Leasing Arrangements. An SAS Administrator may choose whether it will accept leasing notifications and support leasing arrangements. However, regardless of whether an SAS accepts leasing notifications, it is responsible for meeting the core functions established in the *3.5 GHz R&O* and in the Commission's rules, including obtaining and storing sufficient information to recognize and protect lessees CBSDs authorized by other SASs. SASs that do choose to accept and support leasing arrangements must, at a minimum: (1) Accept and store the information required in a licensee's notification; (2) verify whether the lessee has made the required certification with the Commission; (3) verify that the lease will not result in the lessee holding more than the 40 megahertz of Priority Access spectrum in a given License Area, and that lessee operation will not extend beyond the licensee's Service Area or within its PAL Protection Area;

(4) inform the licensee as to whether the notification has been received and verified; and (5) provide the Commission with electronic reports of the leasing notifications it received on a daily basis. Upon receipt of confirmation from the SAS, the lessee may commence operation consistent with the rules governing Priority Access Licensees set forth in section 96.25 (47 CFR 96.25).

221. Assigning Unsold PALs for Resale. In response to Key Bridge and Cantor Telecom's suggestion that the Commission automatically assign all unsold PALs from the auction for resale on the secondary market, we believe this runs contrary to the three-tier system which already permits access to this spectrum through GAA use. Key Bridge and Cantor argue that resale of PALs will foster innovation, but operators of all types can still innovate through GAA use. Further, if there is market demand, we will hold another auction before three-year license expiration, creating another opportunity to access PAL spectrum.

222. Filings. The licensee retains the responsibility to engage in all interactions with the SAS and Commission, including the submission of requisite filings that are directly related to the use of spectrum by the licensee or lessee.

223. Regulatory Status. Priority Access lessees are free to select their regulatory status, regardless of the licensee's status. In the *3.5 GHz R&O* we allowed both Priority Access Licensees and GAA users to choose whether to provide service on a common carrier or non-common carrier basis and for the same reasons, we allow lessees to do the same. As noted in the *3.5 GHz R&O,* this will encourage the ability of Citizens Broadband Radio Service users' ability to use the same equipment interchangeably and avoid hindering a potential lessee's ability to use spectrum based on a Priority Access Licensee's regulatory status.

3. Partitioning and Disaggregation

a. Background

224. The Commission has permitted partitioning and disaggregation on a service-by-service basis, in order to allow licensees to transfer the right to use a portion of the spectrum (disaggregation) or a portion of the geographic license area for that spectrum (partitioning) to parties that value it more highly. In so doing, the Commission is able to promote such goals as more efficient use of and greater access to spectrum, fewer barriers to entry, greater competition, and increased services to consumers. The Commission has allowed partitioning and disaggregation for many services, including Multipoint Distribution Service (MDS), General Wireless Communications Services (GWCS), 800 MHz and 900 MHz Specialized Mobile Radio (SMR), 39 GHz fixed point-to-point microwave, the Wireless Communications Service (WCS), PCS, the 700 MHz Band, and the AWS–3 Band.

225. As these examples make clear, the Commission has permitted partitioning and disaggregation in services with license areas that range in size from CMAs and BTAs (with 734 units and 496 units, respectively) to the much-larger EAs and REAGs (with 176 units and 12 units, respectively). In so doing, the Commission has provided greater flexibility for licensees to meet market demand. For example, when the Commission proposed partitioning and disaggregation for PCS, it stated such a policy would speed service to rural areas and allow market entry by entities that only have the ability to serve a limited population. When the Commission later established rules to allow AWS–3 Band and 700 MHz Band licensees to partition and disaggregate their spectrum, it reiterated that this would allow market entry by new entrants and provide flexibility. In each of these services, the Commission also adopted specific construction requirements to ensure the spectrum was put to use. However, the Commission has also limited or prohibited partitioning and disaggregation in bands that permit different services to share the spectrum in order to prevent interference and promote shared use.

226. In the *Second FNPRM,* the Commission sought comment on whether to allow partitioning and disaggregation of PALs in the 3.5 GHz Band and stated that its initial view was "to prohibit such further segmentation of PALs given their relatively small size (census tracts) and short license terms (three years) as well as the availability of significant GAA spectrum." Many commenters, including AT&T, Cantor Telecom, CTIA, Information Technology Industry Council, Qualcomm, WinnForum, and WISPA, support partitioning and disaggregation in the 3.5 GHz Band and argue it will increase liquidity in the secondary market. In response to concerns regarding license size, WISPA states that while census tracts in non-rural areas may be small, that is not always the case for rural areas. Further, AT&T notes that there are numerous scenarios where smaller areas benefit from partitioning and disaggregation, such as when a licensee wants to make its spectrum available in a specific portion of its license area (*e.g.,* a hospital or university) while maintaining use for the rest of this area, and it observes that such arrangements are easy to administer. Cantor Telecom and WISPA both state there are business cases that cannot be achieved only through GAA use, as it does not provide the same level of protection, but WISPA recognizes that leasing can be used to achieve the same results. The Information Technology Industry Council suggests that concerns regarding administrative burdens can be alleviated by permitting secondary markets without requiring prior Commission approval.

227. Other commenters, however, do not agree that partitioning and disaggregation are needed for successful spectrum utilization in this band, or argue that it should be handled through significantly different administrative procedures. Key Bridge argues that secondary market transactions involving transfers (as opposed to leases) should be promoted by the Commission. In particular, Key Bridge contends that traditional rules for transactions do not apply well to the 3.5 GHz Band and it therefore recommends that the Commission minimize transaction costs by allowing for immediate processing of certain transactions, including transactions that would normally fall under rules specified in section 1.913 (47 CFR 1.913). Although CTIA states that to the extent that Priority Access Licensees find value in partitioning and disaggregation, it should be permitted, CTIA notes the already splintered nature of census tract licensing raises questions about the utility of partitioning and disaggregation. In its initial comments, Federated Wireless states that partitioning and disaggregation of PALs would prove both administratively burdensome and unnecessary due to the relatively small size of PALs and their limited three-year licenses terms. In its reply comments, Federated Wireless clarifies that this opposition was based on the fact that "pursuant to Commission rules [partitioning and disaggregation] processes would entail applying for, and obtaining, Commission approval to formally segment PALs into smaller service areas or blocks of spectrum smaller than 10 MHz." Federated Wireless further clarifies that it objects to the administrative burden and not the ability to move spectrum to parties that value it more highly, as summarized in its reply comments: "[I]f commenters merely are advocating for secondary

uses of PAL spectrum for less than a full census tract (partitioning) or less than the full 10 MHz of PAL spectrum (disaggregation), by using a certification or notice procedure rather than submission of formal Commission applications for partitioning or disaggregation, then Federal Wireless agrees.''

b. Discussion

228. The light-touch leasing process adopted herein can achieve the objectives sought by the majority of commenters to make the spectrum use rights held by Priority Access Licensees available in secondary markets without need for the Commission oversight required of partitioning and disaggregation. Under the light-touch leasing rules, Priority Access Licensees are free to lease any portion of their spectrum or license outside of their PAL Protection Area. This has the same effect—lessees can provide targeted access to geographic areas or quantities of spectrum—without additional administrative burden. Coupled with the availability of 80 MHz or more of GAA spectrum in each License Area, these rules will provide the necessary flexibility to service specific or targeted markets. In response to WISPA's concern that census tracts are larger in rural areas, making targeted service more difficult without holding multiple PALs, we expect GAA spectrum to be particularly abundant in those rural areas, making such services achievable through GAA use.

229. In addition, we note that he reasons for permitting partitioning and disaggregation in more traditionally licensed bands are not prevalent or are absent in the 3.5 GHz Band, which has much different characteristics. The Commission's primary reason for allowing partitioning and disaggregation in other bands was to promote key policy goals such as access to spectrum and flexibility of use, which in turn can result in greater service to consumers. In contrast to more traditional licensing governing other bands, the existing 3.5 GHz Band rules inherently provide this flexibility. As such, the Commission allowed partitioning and disaggregation to increase competition and expedite the provision of service in the near term. For example, the rules governing 700 MHz band licenses, which service rules do allow partitioning and disaggregation (47 CFR 27.15), include a ten-year license term and larger license areas. However, in the 3.5 GHz Band, relatively short license terms and small license areas should facilitate faster deployment of service and allow providers to target smaller populations, meeting the same goals. Further, lower power limits, the ability to dynamically share spectrum, and the absence of construction obligations offer licensees the ability to experiment with different business models and serve niche markets, another basis for allowing partitioning and disaggregation in other services. This flexibility is further bolstered by the rules adopted herein to permit secondary market transactions.

230. Finally, the Commission cannot easily address administrative burdens associated with partitioning and disaggregation through a pre-approval process, as Information Technology Industry Council suggests. Unlike leases, parties seeking approval for partitioning and disaggregation must file an application for partial assignment or transfer of control of a license, even if the transaction does not require prior Commission approval (47 CFR 1.948). While certain assignments and transfers of control do not require prior Commission approval, the assignor must file an application for Commission approval regardless (47 CFR 1.948(c)).

4. Spectrum Exchanges

a. Background

231. The majority of commenters advocate that Commission should permit spectrum exchanges for PALs. Cantor Telecom states that a spectrum exchange would permit qualified participants to gain immediate access to PAL usage rights along with additional benefits, including enhanced price discovery, transparency, and paperwork and cost efficiencies, thereby improving access to available bandwidth and significantly increasing the liquidity of the spectrum. AT&T, Verizon, and WISPA, also support voluntary spectrum exchanges. Alternatively, Federated Wireless states that spectrum exchanges would add complexity and are unnecessary because they serve functions already authorized to be performed by the SAS. Further, Federated Wireless claims that only a fully functional SAS will have sufficient knowledge to confirm whether a secondary transaction meets the conditions necessary to operate. However, Cantor Telecom responds that an SAS's main purpose is to function as a geolocation database, while a spectrum exchange focuses on facilitating secondary market access to PALs.

232. Other commenters address whether the SAS should act as a spectrum exchange. Verizon asks that the Commission not only permit, but encourage SAS Administrators to establish spectrum exchanges. AT&T, Google, and WISPA state that the Commission should neither prohibit nor require an SAS to operate as a spectrum exchange. AT&T also states that if an SAS does act as a spectrum exchange, these functions should be separable from the core functions of the SAS.

b. Discussion

233. The rules that govern the 3.5 GHz Band do not explicitly address spectrum exchanges, and we take no action to establish or prohibit spectrum exchanges, nor do we take action to favor any particular type of private market exchange mechanism. In keeping with the operational flexibility we have created for the 3.5 GHz Band, we agree with WISPA that market mechanisms should drive the creation of spectrum exchanges, instead of Commission rules. This approach is consistent with the Commission's general approach of relying on market processes where possible in regard to secondary markets. If a market demand develops for spectrum exchanges in the 3.5 GHz Band, it is in the public interest to allow such exchanges to respond to this demand consistent with the requirements of the Communications Act and our rules.

234. In regard to whether an SAS should be permitted to also act as a spectrum exchange, again we will let market forces determine the role of the SAS, and as such, stand-alone exchanges or SAS-managed exchanges are permitted. As suggested by Google, there may be SAS Administrators who decide that it is economical to operate a spectrum exchange as a function of the SAS. We also acknowledge Federated Wireless' concern that spectrum exchanges will add unnecessary complexity to band management. However, the Citizens Broadband Radio Service rules already require an SAS to track Priority Access, GAA and Incumbent Access operations and, as such, we do not believe tracking PAL ownership or coordinating with an independent spectrum exchange would be overly-burdensome. Moreover, our rules do not require individual SAS Administrators to act as spectrum exchanges or to work with any third-party spectrum exchanges that may develop. Rather, they provide the flexibility for SAS Administrators to provide these services at their option to meet market demand. Similar to offering leasing, the option to operate a spectrum exchange is voluntary and so long as SAS Administrators can fulfill their core duties and comply with Commission rules, an SAS may also operate a spectrum exchange.

5. Spectrum Aggregation and Attribution in the 3.5 GHz Band

a. Background

235. In the *3.5 GHz R&O,* the Commission adopted a spectrum aggregation limit that would allow licensees to hold no more than four PALs in one census tract at any given time (or no more than 40 megahertz out of the 70 megahertz allocated to PALs). The Commission concluded that this limit of 40 megahertz would facilitate competition, innovation, and efficient use of the 3.5 GHz Band, ensuring that it would be allocated in a manner that serves the public interest, convenience, and necessity. However, for a variety of reasons, the Commission decided it would not include the 3.5 GHz Band in the spectrum screen. The *Second FNPRM* sought comment on the application of our spectrum aggregation limits in the context of the initial licensing of PALs, whether to use the Commission's existing attribution standard for these purposes, and how any unique characteristics of PAL auctions, such as the need for streamlined processing, should be taken into account.

236. The majority of commenters do not directly address spectrum aggregation limits but those that do urge the Commission to refrain from adopting spectrum aggregation rules. AT&T believes that the Commission should not stifle secondary markets by adopting spectrum aggregation rules for this band, as the 3.5 GHz Band is nascent and no competitive issues have arisen that suggest a need for regulation. For the same reasons, AT&T opposes applying the attribution standard in existing rules to PALs, and no other commenters address the application of our attribution standard. Federated Wireless also urges the Commission not to count PALs toward spectrum aggregation limits, stating this would not be equitable since by its nature, PALs will likely not be in use full time by the licensee. The Information Technology Industry Council requests that the Commission consider allowing a Priority Access Licensee to hold more than four PALs (*i.e.,* 40 megahertz) of spectrum in one census tract, even for a limited duration or geography.

b. Discussion

237. As noted above, we do not include 3.5 GHz Band in the Commission's spectrum screen, as PALs are not suitable and available for the provision of mobile telephony and broadband services in the same manner as other bands that are currently included in the Commission's spectrum screen applied to secondary market transactions. This finding was based on the unique characteristics of the band, including multiple tiers of many users and short license terms. We do not revisit this finding here and there is no support on the record for doing so.

238. In the *3.5 GHz R&O,* the Commission also addressed a spectrum aggregation limit within the Priority Access tier and concluded that one licensee many not hold more than 40 megahertz of the maximum of the 70 megahertz of Priority Access spectrum in each License Area. As the Commission decided in the order, this spectrum aggregation limit will promote diversity by ensuring the availability of PALs to at least two users in those geographic areas where there is the greatest likelihood of demand, and will incentivize innovation and competition that will likely lead to more choices for the consumer, while still allowing for applications that require larger blocks of spectrum. The Information Technology Industry Council presents no additional arguments and we also decline to revisit the 40 megahertz spectrum aggregation limit.

239. In light of the spectrum aggregation limit in our rules, these secondary markets rules must make clear to whom the limit should apply. Given the lack of record on attribution issues in the Citizens Broadband Radio Service context, we apply the attribution threshold as set forth in section 20.22 of the Commission's rules and referred to in the *Second FNPRM* (47 CFR 20.22). These controlling and non-controlling interests delineated in section 20.22 (47 CFR 20.22) shall be attributable to applicants for licenses and parties to leasing arrangements in the 3.5 GHz Band.

C. FSS Protection

1. In-Band Protection of FSS in the 3600–3700 MHz Band

a. Background

240. The Commission has licensed FSS earth stations to receive on frequencies in the 3600–3650 MHz and 3650–3700 MHz bands. FSS use of the 3600–3650 MHz band is limited to non-federal international intercontinental systems (47 CFR 2.106). In the *3.5 GHz R&O,* we adopted rules that require CBSDs to protect existing in-band FSS earth stations from interference (47 CFR 96.17). As described in section III(H), we also require FSS earth stations seeking protection under the rules to register with the Commission annually, or upon making changes to any of the parameters listed in § 96.17(d) (47 CFR 96.17). The information included in these registrations will be used by the SASs to protect licensed FSS earth stations. We found that, while there were technical implementation details to be worked out, an SAS-based system should be an effective means of protecting licensed FSS earth stations and promoting broadband deployment in the band. We also noted that specific technical details and requirements may be developed as part of the SAS approval process and may be informed by the work of an industry-led multi-stakeholder group. Therefore, in the *Second FNPRM,* we sought comment on specific approaches to calculating and implementing FSS protections.

241. In the *Second FNPRM,* we sought comment on: (1) Interference protection criteria appropriate for establishing FSS interference limits; (2) the methodology for calculating exclusion distances for CBSDs, and in particular, the applicability of the Commission's example methodology in the 3650–3700 MHz proceeding; (3) whether or not to establish default protection areas around FSS earth stations; (4) the RF propagation model(s) best suited for SAS protections of FSS; (5) policy and methods for adjudicating demands for increased spectrum use at a location that would result in the protection criteria for an FSS earth station receiver being exceeded; and (6) methods for ensuring that End User Devices do not interfere with FSS earth stations while avoiding a mandate for geo-location requirements on end user devices.

242. Numerous commenters responded to the *Second FNPRM,* presenting a range of proposed approaches to the issues presented. Those comments are addressed in detail on a subject-by-subject basis below, including calculation of FSS protection areas; interference protection criteria; RF propagation models; and other issues. As with our efforts to address other sharing issues in the 3.5 GHz Band, the rules we have developed are designed to enable use of the band for new wireless services, while maintaining protection for the in-band FSS operations. We adopt specific in-band FSS protections below based on the characteristics of the FSS sites and modeled to a conservative level, and provide unprecedented protections for certain C-Band FSS sites.

b. Calculation of FSS Protection Areas

(i) Background

243. In the *Second FNPRM,* we sought comment as to whether we should establish default earth station protection areas based on assumed FSS earth station receiver characteristics, such

that CBSD operation outside of this area would be assumed not to cause interference to earth stations, and whether the geographic area could be adjusted by an SAS to accommodate actual FSS operating characteristics. We also noted that the Commission's example methodology set forth in Appendix D in the 3650–3700 MHz Band R&O could be a useful starting point for co-existence analysis, and we sought comment on the use of this methodology by an SAS to calculate exclusion distances for CBSDs with respect to individual FSS earth stations in the 3.5 GHz Band.

244. Many commenters support protection of incumbent FSS earth stations from aggregate interference but assert that default protection areas are inefficient and utilizing worst case assumptions may lead to overprotection of FSS earth stations. Specifically, Dynamic Spectrum Alliance, Federated Wireless, Google, Information Technology Industry Council, Microsoft, Wi-Fi Alliance, and WinnForum argue against the imposition of default protection areas based on worst case assumptions. WinnForum claims that default areas are inherently inefficient, and almost inevitably, provide either too little protection to the incumbent, or overly restrict other operations. In addition, default protection zones may not account for aggregation effects and would have to be quite large to account for worst case aggregate interference. The Information Technology Industry Council also argues that for FSS, the Commission should not adopt default or generalized protection zones for all FSS earth stations. The Wi-Fi Alliance argues that the Commission should not over-protect FSS earth stations and SASs should be permitted to calculate protection areas based on terrain characteristics and FSS earth station operational parameters. Microsoft claims that it is possible to protect FSS earth stations without imposing large protection zones and that the size and shape of each protected area should be limited to that which is technically necessary to protect licensed satellite operations. Rajant argues for a fact-based approach to sharing spectrum with incumbent FSS and, from their deployments in the 3650–3700 MHz band, contends that much smaller coordination zones than 150 km are possible.

245. Google also argues that the Commission should tailor FSS protections to actual conditions, rather than establishing a default protection zone for all FSS earth stations. According to Google, these protection zones should account for real world factors such as propagation, terrain, earth station pointing angles, and transmitter characteristics. They argue that utilizing worst case or near worst case assumptions for these elements would result in over protection of FSS earth stations, inefficient spectrum use, and diminished investment in the band. Google claims that an SAS can dynamically calculate an appropriate default protection area for each site, based upon local terrain, pointing directions for the FSS antenna, and other site-specific considerations. Such protection areas could be based upon the antenna gain and receiving system noise temperature of the particular antenna for which the protection area is being calculated. However, a default protection area would only demarcate a region beyond which all CBSDs will be considered non-interfering. Within the protection area, CBSDs would be permitted to operate, provided that an SAS determines that aggregate interference does not exceed the interference thresholds.

246. In its reply comments, Google proposes a seven step methodology for calculating interference protection for FSS earth stations. Google's approach, which accounts for individual FSS site characteristics and interference from individual, as well as aggregate, CBSD operations, includes calculations of FSS antenna gain in the direction of a CBSD requesting authorization to operate, CBSD power spectral density in the direction of the FSS antenna, path loss between the CBSD and FSS earth station antenna, the received interference power at the FSS antenna from the CBSD seeking authorization and the aggregate interference power from all CBSDs within a default protection area, and a comparison of the aggregate calculated power to an interference threshold. Under Google's proposal, SASs would only allow CBSDs to operate if the aggregate power of all CBSDs in the area falls below the permissible interference threshold.

247. Regarding the applicability of the example methodology in Appendix D of the 3650–3700 MHz Band R&O, Google asserts that the Commission should not adopt the separation distance methodology in Appendix D because it contains latent assumptions that are not discernible from the information provided. Examples include assumptions regarding propagation models and interference objectives that are built into the equations. Electrodynamics states that their testing proves that the Appendix D methodology is insufficient because there is not an adequate basis for microclimate analysis to justify the methodology.

248. WinnForum also recommends that the Commission adopt calculation methods to protect FSS earth stations that are based on actual deployment characteristics and public, scientifically reviewed propagation models. WinnForum believes that the geometric approach in Appendix D is an appropriate method for the SAS to use in calculating protections for FSS earth stations. Specifically, WinnForum contends that the operating parameters laid out in Table 1 of Appendix D—including antenna gain parameters, system noise temperature, and bandwidth—are appropriate parameters for the SAS to use in protection calculations. These operating parameters also include the antenna reference pattern in section 25.209(a) (47 CFR 25.209(a)), system noise temperature of 142.8 K, polarization (linear or circular), and receive bandwidth (40 kHz–36 MHz).

249. SIA argues that while some aspects of the Appendix D methodology such as the geometric analysis are useful elements for conducting co-existence analyses and calculating exclusion distances for CBSDs with respect to individual FSS earth stations, the Appendix D methodology is not sufficient to adequately protect FSS operations from interference from CBSDs. SIA claims that Appendix D has two major flaws. First, it does not provide a means to calculate separation distances required when there are multiple small cell interfering transmitters and therefore cannot be used to consider aggregate interference. Second, the separation distance formula does not consider critically important variable parameters such as the power of the in-band interfering signal, the elevation profile from the earth station to the small cell location of the interfering in-band signal, the terrain profile for the specific location, the time variability of propagation path loss, and the earth station receiver noise temperature. Further, SIA states that, since Appendix D does not discuss the origin of the formula or the constants it uses, SIA lacks the information necessary to suggest appropriate modifications and additional data for adapting the formula for application to the 3.5 GHz Band.

250. SIA supports the adoption of protection criteria that use worst-case assumptions rather than real-world deployment conditions. SIA claims that an approach based on a real-world interference protection system is misguided because it would be difficult to achieve, unduly burden FSS

operators, and raise significant confidentiality concerns. SIA argues that a real-world interference protection system would be challenging to implement because it would require design, development, installation, testing, and maintenance of carrier monitoring hardware, software, and communications links among the FSS earth stations and the SAS. According to SIA, such a system would impose unreasonable burdens on FSS operators who would have to report changes every time they occur. Moreover, the system would need to include highly commercially sensitive information such as frequencies, bandwidths, and carrier-to-noise ratios.

251. Federated Wireless contends that SIA's approach is far too conservative and, by stacking worst case assumptions atop one another, presents an unrealistic view of the interference environment in the 3.5 GHz Band. Federated Wireless supports an approach based in real-world deployment characteristics and measured data. Federated Wireless notes that the Spectrum and Receiver Performance Working Group of the Commission's Technological Advisory Council (TAC) has endorsed a similar approach. Federated Wireless also proposes that active sensing of the radio environment in the vicinity of FSS earth station receivers, is technically feasible and could enhance the protection provided to incumbents. According to Federated Wireless, such an approach could be based on propagation models and providing real-time measurement of aggregate interference to the SAS as part of a closed loop system that ensures I/N levels do not exceed protection criteria, even during anomalous propagation conditions. It encourages field trials with the satellite community to demonstrate the effectiveness of SAS protections.

(ii) Discussion

252. As we stated in the *3.5 GHz R&O,* we believe that protections for FSS earth stations in the 3.5 GHz Band should be flexible and customized to the specific parameters of each earth station and the interference environment in the vicinity of each earth station. We agree with commenters that argue that the information submitted by registered CBSDs and FSS earth stations should be used to customize the protections afforded to FSS earth stations on temporal, spectral, and geographic bases and should not be based on worst case assumptions. In addition, as discussed below, while we do not mandate a specific methodology for determining such protection areas, certain assumptions used in Appendix D of the 3650–3700 MHz Band R&O are appropriate for determining FSS protections in the 3.5 GHz Band as well.

253. We disagree with SIA's proposal to adopt static default protection zones based on worst case assumptions. As Google and Federated Wireless argue, such static protection zones are not reflective of the actual interference protection needs of individual FSS earth stations and will not promote efficient use of the band. The approach advocated by Google and Federated Wireless is consistent with the TAC's recommendation to the Commission, that ". . . worst case analyses, when applicable, [should be used] only to determine the consequences of harmful interference, and tested statistical techniques to assess risk [should be used] to perform a thorough assessment of the impact of mixing different services in the same or nearby bands."

254. We agree that the adoption of static protection zones based on worst case assumptions would overprotect FSS earth stations at the expense of new Citizens Broadband Radio Service users and would effectively prohibit new deployment in some geographic areas without any demonstration that such deployments would actually cause interference to individual FSS earth stations. Such an approach would be inconsistent with the Commission's goals as it would be likely to impede innovation and erect barriers to efficient use of the band.

255. We also disagree with SIA's assertion that an interference protection methodology based on real-world deployment factors would be difficult to achieve, unduly burden FSS operators, and raise confidentiality concerns. We address—and reject—SIA's arguments with regard to the potential burdens of registering and updating earth station criteria in section III(H) above. Moreover, we do not believe that the information that FSS earth stations are required to register with the Commission is likely to be commercially sensitive or confidential (47 CFR 0.459). Indeed, SIA itself notes that much of the information that FSS earth station licensees must register under section 96.17 (47 CFR 96.17) is already registered with the Commission in IBFS. We agree with those commenters, including Federated Wireless, Google, and WinnForum that state that, by using the information from FSS earth station registrations and CBSD registrations in the surrounding area, SASs will be able to enforce customized protection areas tailored to the specifications of each FSS earth station in the 3.5 GHz Band. We believe that such an approach will effectively protect FSS earth stations, maximize spectral efficiency, and promote deployment in the band.

256. We also believe that it is appropriate to establish an area around FSS earth stations over which SASs will calculate potential interference power levels from all CBSDs in that area to reduce the burden on SASs and narrow the field for interference calculations. CBSDs outside of this area are deemed to be too far away to cause interference. Reasonably defined areas will limit the number of CBSDs that SASs would have to account for in calculating protection areas without increasing the risk of interference to FSS earth stations. As such, we find that SASs should account for in-band, co-frequency interference from all CBSDs within 150 km of an FSS earth station when calculating protection distances. This distance is consistent with the 150 km FSS protection distance established in the 3650–3700 MHz Band R&O. We also adopt 40 km as the distance for adjacent emission and blocking interference calculations based on the analysis presented in this proceeding by Alion. We emphasize that these are not default protection areas but merely the areas within which SASs must account for aggregate interference from CBSDs when calculating protections for individual FSS earth stations.

257. Regarding the methodology used to calculate protection areas for FSS earth stations the *3.5 GHz R&O* concluded that an analytic framework similar to the one detailed in the 3650–3700 MHz Band R&O would be applicable to the 3.5 GHz Band. We sought comment on the applicability and use of this methodology in the *Second FNPRM.* While some commenters agree with aspects of the Appendix D methodology, most encouraged us not to adopt the approach in its entirety for the 3.5 GHz Band. After review of the record, we agree that the Appendix D methodology includes some relevant components but it is not wholly suitable for an SAS-based protection system. For instance, in the *Second FNPRM,* we proposed that FSS earth station protection criteria be based on the FSS earth station off-axis antenna gain performance standard that was in section 25.209(a) of our rules at that time (47 CFR 25.209(a)). Those rules specified an envelope of maximum FSS antenna gain as a function of the angle (in degrees) from the main lobe (47 CFR 25.209(a)(1) and (4)). The SAS can use this standard for the calculation of aggregate interference from CBSDs located at different angles and distances from the FSS antenna main beam. We agree with WinnForum that the

Commission's rules that allow earth stations to register pointing information along with its operating parameters would enable such geometric calculations. Specifically, we adopt the use of section 25.209(a)(1) and (4) (47 CFR 25.209(a)(1) and (4)) FSS antenna gain envelopes in the methodology for calculating exclusion distances. We also agree with Google's suggestion that we adopt the FSS system noise floor value in Appendix D (142.8 K). This value was originally derived from SIA's filings in the 3650–3700 MHz proceeding. Since its adoption, we are unaware of any complaints related to the use of this system noise floor value in the 3650–3700 MHz Wireless Broadband Service.

258. We are encouraged by the efforts of commenters to address the development and implementation of protection methodologies for FSS earth stations in the 3.5 GHz Band. We believe that these approaches—or elements thereof—may be used to establish consistent, flexible, and effective protections for FSS earth stations in the 3.5 GHz Band. However, in the interest of promoting technological and operational flexibility, we do not believe that the specific calculation approach in all aspects should be codified beyond the rules adopted in this section. We direct WTB and OET to address whether and how to do so during the SAS approval process, consistent with the approach adopted in this order.

259. We encourage industry to further develop improvements to protection criteria standards and incumbent reliability requirements that are more transparent and reproducible, based on measurements and operational experience, using realistic deployment scenarios that are representative of real risk. We also encourage industry to continue to develop novel technological approaches to interference protection, including sensing techniques, which may be used to improve protection criteria in the future.

c. Interference Protection Criteria

(i) Background

260. In the *Second FNPRM,* we agreed with commenters that responded to the FNPRM that FSS earth stations could be effectively protected by establishing a maximum aggregate power limit at each FSS earth station. We stated that an aggregate threshold level should be based on a theoretical thermal noise floor (Interference-to-Noise ratio; I/N) and account for earth station receiver performance degradation as a result of both desired and undesired signals (Carrier-to-Interference-plus-Noise ratio; C/(I+N)). We proposed that signals from CBSDs at the output of the FSS antenna system be permitted up to this aggregate threshold 47 CFR 25.209(a). We also proposed that each SAS calculate the permissible separation distance for a CBSD requesting activation, using an appropriate calculation methodology and propagation model, and taking into account the registered parameters of the CBSD and FSS earth station. We sought comment on appropriate interference protection criteria and requested technical analyses and field studies to support any such submissions. We instructed commenters to assume the use of appropriate, commercially available earth station receiver input filters in compiling their analyses.

261. SIA, Google, and the WinnForum propose to protect in-band FSS earth stations from aggregate interference using a protection criterion equal to an I/N of −12 dB. This value is derived from ITU–R S.1432–1. Google proposes that interference into FSS earth stations should not exceed 6% of the system noise temperature, corresponding to I/N of −12 dB. WinnForum agrees and contends that in-band FSS earth stations should be required to accept no more than 6% of the noise floor (I/N = −12 dB) in aggregate interference. SIA also argues that interference protection criteria should be based on limiting the increase of an earth station receiver's noise floor to 6%, equal to I/N of −12 dB.

262. Federated Wireless claims that I/N of −12 dB is overly conservative and that the real characteristics of FSS systems and potential interferers should be used for interference analysis. Federated Wireless goes on to say that at a minimum, the proper application of ITU–R S.1432 would result in the use of I/N of −12 dB criterion for long term effects, which suggests support for I/N of −12 dB as an initial long term median value for protection, subject to future change and improvement as more evidence of the real characteristics of FSS systems and potential interferers becomes known. In a separate filing, Federated Wireless asked the Commission to take note of the approach to managing interference from End User Devices that was suggested in the final report of the Commerce Spectrum Management Advisory Committee (CSMAC) Working Group 1(CSMAC Report). Federated Wireless argues that the CSMAC Report supports the use of a protection criterion equal to I/N of −10 dB as proposed in various ITU documents. iPosi also disagrees with SIA regarding the level of protection that should be afforded, and proposes an aggregate source I/N of −6 dB, stating that while FSS link margins are small, the allowable aggregate interference must be measurable.

263. Radio Soft & LS Telecom contend that interference criteria should be based on C/(I+N) because, as described in the FNPRM, noise floor itself is too pessimistic, considering that signals even a few dB above noise will allow dramatically improved access to CBSDs without any reliability degradation to an incumbent FSS. While proposing an I/N value of −12 dB, Google asserts that this value represents only 0.25 dB in noise floor degradation, and represents an even smaller portion of the carrier-to-interference plus noise (C/(I+N)) ratio. SIA argues that interference protection criteria should not be based on C/(I+N), explaining that the desired signal level at the FSS should not be a part of the calculation. SIA states that this would require the FSS to report signal level changes every time they occur, which would be unduly burdensome and has not been proposed in this proceeding.

(ii) Discussion

264. Many commenters argue that protection of FSS earth station receivers from aggregate interference should be based on a received interference power limit at the FSS receiver. We agree that allowing the SAS to calculate protections based on an aggregate interference limit would be the most flexible and efficient means of protecting FSS earth stations and facilitating widespread deployment in the Citizens Broadband Radio Service. Accordingly, we require the SASs to utilize the received interference power to determine appropriate and consistent protections tailored to the actual deployment and operational parameters of FSS earth stations in the 3.5 GHz Band consistent with the approach described above.

265. Commenters representing both satellite interests and new-entrants contend that protection for FSS earth stations should be based on an I/N of −12 dB, as set forth in ITU–R S.1432–1 at the FSS earth station's receiver. As noted above, there are also some commenters that believe this criterion is overly conservative. Consistent with the majority of commenters on this issue, we find that using I/N of −12 dB as a long term median threshold will provide sufficient protection for in-band FSS earth stations. While we are basing our approach to FSS protection on this value, we note that some commenters believe that it may be more conservative than is necessary to protect FSS earth stations. We agree that this threshold may be conservative but we do not

believe that commenters provide sufficient evidence for us to adopt a less conservative I/N value for protection of FSS earth stations at this time. Nonetheless, we will monitor industry efforts to study the real world protection needs of FSS earth stations in the band as well as the effects of Citizens Broadband Radio Service equipment on such earth stations. We may revisit the interference threshold in the future if justified by future technical studies and real world observations.

266. Consistent with these findings, we adopt a long term interference threshold for protecting FSS from in-band co-channel interference from CBSD fundamental emissions. We adopt a long term median aggregate protection limit based on I/N of −12 dB at the output of the FSS antenna system, with the FSS system noise, N, based on T = 142.8 K as noted above. Thus, the long term median threshold is the thermal system noise floor of the FSS receiver raised by the acceptable added interference (−12 dB) relative to that system noise level, which equates to: I = −129 dBm/MHz (this is calculated using the equation in dBm/MHz; I = N + I/N = (k+T+B) + I/N = −198.6 dBm/Hz/K + 21.5 dB–K + 60 dB–Hz/MHz + (−12 dB); where 21.5 dB–K is equivalent to 142.8 K; 21.5 = $10\log_{10}(142.8)$).

267. We also reject SIA's proposal to apply the interference protection methodology described in ITU–R S.1432–1 in the 3.5 GHz Band. We note that SIA has argued in favor of utilizing ITU–R S.1432–1 in other proceedings and we have consistently refused to adopt all of its methods and assumptions. Notably, in the 3650–3700 MHz Band R&O, we found that the specifications in ITU–R S.1432–1 are design criteria for FSS earth stations, not interference protection criteria and, accordingly, rejected its specifications as suitable interference criteria in that proceeding. While ITU–R S.1432–1 utilizes the long-term I/N of −12 that commenters support and we adopt, it also includes assumptions and approaches that are inapplicable to terrestrial mobile services. Indeed, ITU–R S.1432–1 specifically addresses degradations to FSS signals from time invariant interference and notes that there are currently no recommendations dealing with interference from co-primary allocated mobile systems into FSS systems, while the 3.5 GHz Band will likely be used for terrestrial mobile service. As a result, the assumptions and methods used in ITU–R S.1432–1 are not necessarily applicable to this band. The assumptions are based on an arbitrary allotment of time invariant interference and do not clearly define the time allowance corresponding to other sources of interference. Moreover, the assumptions are unsupported by either performance measurements or operational experience. Therefore, consistent with established Commission precedent, we find that the ITU approach is inappropriate for use with terrestrial mobile service and decline to adopt the methodology described in ITU–R S.1432–1 for this band.

268. We believe that the long-term median interference limit adopted herein will effectively protect in-band FSS earth stations from interference. However, we encourage prospective SAS Administrators to consider the possibility of short-term interference while developing their protection models for submission during the SAS approval process and to work with FSS earth station licensees to resolve any reports of actual interference, consistent with section 96.17(f) (47 CFR 96.17(f)).

269. Reference FSS RF Filter. In the NPRM, we sought comment on methods of mitigating out-of-band interference from CBSDs. In the FNPRM, we specifically sought comment on the use of filters to reduce or eliminate interference from out-of-band sources. In the *Second FNPRM,* we instructed commenters to assume the use of appropriate, commercially available earth station receiver input filters when performing interference analyses. A diverse array of commenters addressed the efficacy of filters throughout this proceeding and utilized filtering assumptions in analyzing interference effects on FSS earth stations. After review of the record and consistent with the Commission's instructions in the *Second FNPRM,* we require that the SAS must utilize assumptions consistent with the capabilities of commercially available filters in determining interference protections for FSS earth stations.

270. The Content Interests sponsored analyses by Alion have referenced a commonly available RF filter from Microwave Filter Co (Model 13961W) in their coexistence studies. The Content Interests sponsored analysis by Comsearch uses an FSS RF filter mask for a commercially available C-Band interference elimination filter that has similar characteristics. While these references are for commercial filters applied to the C-Band, we believe that these RF filter masks represent state-of-the art filter performance that would also be commonly found for protecting FSS earth stations in the 3600–3700 MHz band. As evidence of this, we find two examples of C-Band RF filters from Microwave Filter Co. with passband lower edges at 3600 MHz and 3625 MHz, and a filter from Eagle Comtronics Inc. with a passband lower edge at 3600 MHz, all with similar rejection characteristics and low insertion loss.

271. We expect that FSS licensees will take reasonable steps to protect their licensed band of operation with applicable RF interference rejection filters, and we therefore adopt a reference FSS RF filter mask with similar characteristics as those referenced here. Specifically, we adopt a reference RF filter to be considered for in-band FSS protection with 0.5 dB insertion loss in the passband, 0.6 dB/MHz attenuation to 30.5 dB at 50 MHz offset below the lower edge of the FSS earth station's authorized passband and 0.25 dB/MHz attenuation to 55.5 dB at greater than or equal to 150 MHz offset below the lower edge of the FSS earth station's authorized passband. Based on the filings in the record regarding filter performance, we believe that these specifications represent common capabilities of filters that are commercially available in the band and should not be construed as an endorsement of any particular technology, filter type, or product.

272. Blocking. As detailed above, throughout this proceeding, we have sought comment on the effects of aggregate interference on FSS earth station receivers (47 CFR 96.17). While much of the record has been focused on the effects of co-channel interference and OOBE on FSS earth stations in the 3.5 GHz Band, some commenters have argued that receiver blocking effects due to strong signal effects from adjacent channel CBSD transmissions may also cause significant interference to FSS earth stations by overloading or blocking the RF front end of these receivers. Indeed, the Commission specifically sought comment on the point at which even significantly reduced OOBE limits would cease to provide additional protection benefits due to these blocking effects. Specifically, commenters have filed analyses with calculations of the maximum RF input power that can be fed to an FSS earth station's low noise block downconverter (LNB) from neighboring non-FSS transmitters operating outside of the FSS earth station's authorized passband, while still maintaining reasonable linear performance. They contend that RF input power from fundamental emissions outside of the FSS earth station's authorized passband that exceed this FSS input power limit can cause serious distortion and interference, called LNA/LNB overdrive, LNB saturation, or blocking. After

review of this information, we find that it is appropriate to limit fundamental CBSD emissions outside of the FSS earth station's authorized passband so that the aggregate RF power at the output of a reference FSS RF filter and antenna system would not exceed a median adjacent blocking interference threshold.

273. SIA has filed a study of sharing considerations between small cells and geostationary satellite networks in the 3.4–4.2 GHz band. SIA references ITU–R M.2109 that analyzes the possibility of FSS LNA/LNB overdrive into non-linear operation at input power of −60 dBm. SIA states, "There is a large variance between devices of this power level, with input power levels typically ranging anywhere from −44 dBm to −60 dBm. However, a median value of −55 dBm can be used as a representative number." Furthermore, SIA states "The maximum input power that can be fed into the LNA/LNB and still maintain linear operation is unique to each device but is approximately 10 dB below the input power level associated with the 1 dB gain compression point (see Section 8.1.1 and Annex E of ITU–R M.2109). Accordingly, the maximum power that can be fed into the LNA/LNB and have the device remain in the linear mode of operation is approximately −65 dBm" The large variance in input power limits and the median value of −55 dBm cited by SIA above are all represented without reference to specific manufacturer products or specifications. We have analyzed a specific product that we believe has typical performance characteristics. That filter, on which we base the blocking limit, has an input power limit of −54 dBm, which differs from the median value cited by SIA by only 1 dB. Because we are basing the requirement on a typical filter and there is variance among filters that are commercially available, we believe that a more conservative 6 dB back-off from this input power limit, rather than the 3 dB recommended by SIA is appropriate. We therefore adopt −60 dBm RMS as the median blocking limit from aggregate adjacent CBSDs, at the output of a reference RF filter and antenna. We believe this results in a reasonable threshold that would effectively protect many devices but not necessarily the worst case weakest device with the lowest input power limit. Finally, we note that these specifications represent common capabilities of filters that are commercially available in the band and should not be construed as an endorsement of any particular technology, filter type, or product.

d. RF Propagation Models

(i) Background

274. In the *Second FNPRM,* we sought comment on what propagation model(s) are best suited for SAS-based protections of FSS. We also requested measurement results to validate model parameters for short range and long range propagation scenarios involving urban clutter, environmental factors, and indoor-to-outdoor propagation. We tentatively concluded that each SAS must use the same propagation model.

275. Commenters including AT&T and SIA recommend the use of a single propagation model or a uniform set of models to promote fairness and consistency. AT&T advocates the use of uniform models across SASs, vetted and validated by an expert international body. AT&T asserts that such models would produce the same results, simplify SAS administration by reducing the frequency in which SASs need to communicate with each other, and would prevent conflicting spectrum assignments between users served by different SASs. SIA urges the Commission to mandate the use of ITU propagation model ITU–R P.452–15. SIA argues that this model is well suited for point-to-point interference predictions and able to account for actual terrain variations between transmitter and receiver. SIA asserts that, to adequately protect FSS incumbents, the prescribed level of interference cannot be exceeded, and that any propagation model must measure how high the interference is, rather than how often some level is exceeded. SIA also argues that it is crucial that the propagation model be vetted by ITU Study Group 3 or an appropriate scientific body such as NTIA's Boulder ITS.

276. Other commenters argue that the Commission should allow SAS Administrators to adopt varying propagation models to promote investment, innovation, and more intensive spectrum use in the 3.5 GHz Band. Google argues that variation in interference determination capabilities does not cause disparate protection requirements or operational inconsistencies because the inability to determine non-interference is not the same as a determination of interference. According to Google, both results adequately protect incumbents, and they are not inconsistent—one simply employs methods that determine non-interference in a particular location with a higher degree of certainty. Moreover, Google argues that results of these interference determinations will be shared with other SAS Administrators, so all providers can make use of the most precise determination, without any additional operational complexity. Google also argues that while ITU–R P.452–15 can serve as a suitable baseline or safe-harbor propagation model, the Commission's certification process provides a means for vetting modified approaches followed by public testing. Dynamic Spectrum Alliance and OTI/PK also argue that the Commission should establish a baseline propagation model and allow SAS providers to differentiate themselves by offering more sophisticated modeling techniques.

277. WinnForum members recommend that while such models are in development, the Commission should require SASs to use an existing public and reviewed interference prediction propagation model, such as ITU P.452–15, or the ITM model developed by NTIA. There is agreement among WinnForum members to use an interference prediction propagation model, however, there is no agreement as to whether different SAS implementations should be permitted to make use of different propagation models. As another alternative, iPosi proposes a conservative deterministic approach to FSS protection by using measured building loss coupled with free space path loss, arguing that clutter models are statistical and require a leap of faith as to their accuracy for the specific scenario.

(ii) Discussion

278. After review of the record, we continue to believe that it is in the public interest for each SAS to utilize the same propagation model for FSS earth station protection. However, we also decline to impose a specific propagation model at this time and encourage industry to work collaboratively to develop a simple, easily implementable model (*e.g.,* the ITM/Extended Hata model used to determine the coastal Exclusion Zones). This model may account for terrain and clutter, must be implementable by any SAS, and must not rely on proprietary information unavailable to all SAS Administrators. We direct WTB and OET, in coordination with NTIA and DoD, to review any such models submitted as part of the SAS approval process and to select an appropriate model prior to final approval of any SASs.

279. We disagree with commenters that contend that each SAS Administrator should be permitted to

use its own propagation model to determine protection for FSS earth stations. Such an approach could result in inconsistent and, in some cases, incompatible protection determination between different SASs. While Google asserts that allowing for differentiated propagation models would not lead to inconsistent results between SAS Administrators, it has not presented sufficient evidence that would lead us to support such a counter intuitive conclusion. Moreover, even if Google's assertions are plausible, we believe that, especially at the outset, simplicity and consistency will serve the public interest more than additional flexibility for SAS Administrators. To effectively promote investment and ensure that FSS earth stations are protected, it is important for all users in the band—incumbents and Citizens Broadband Radio Service users alike—to have confidence that protection criteria will be applied uniformly by all SASs. This approach is consistent with our policies regarding federal incumbent protection and determinations of Priority Access use as set forth in section IV(A)(2). Consistency among SASs will promote predictable and stable spectrum assignments, assure uniform protection of FSS earth stations, and encourage robust deployment in the band. We therefore find that it is in the public interest for SASs to make use of the same propagation model for determining FSS protections.

280. While we decline to impose a particular propagation model at this time, we disagree with SIA's assertions that the Commission should use a propagation model that protects against worst case interference scenarios. Utilizing a free space model or another model that does not account for real world propagation effects and conditions would unnecessarily overprotect FSS earth stations and impede deployment in the band. The Commission's goal is to ensure that Incumbent Users are protected consistent with real world applications and conditions and the propagation model used to protect Incumbent Users must reflect and further those goals.

281. Finally, we recognize certain limitations of the models that have been suggested in the record, such as ITU–R P.452 and Longley-Rice ITM. We agree, for example, with the statement in ITU–R M.2109 that, in using the propagation model in ITU–R P.452, a smooth earth model that is representative of coastal areas and flat inland plain regions, is not representative of areas that have different physical characteristics and the use of such a model may result in the overestimation of the interference into a receiving FSS earth station. This is an example of the fact that one propagation model may not be suitable for all RF environments, and that multiple models (either in combination or applied individually in the circumstances for which they are best suited) may be appropriate in covering diverse environments with multiple characteristics (*e.g.,* urban clutter, over sea and land, long distance rural paths, etc.). We also note that the Extended-Hata model was creatively used in conjunction with ITM by NTIA for analyzing interference protection zones to protect incumbent DoD Navy radar systems in this band. We believe that the limitations of any single model in covering diverse RF environments (including indoor and outdoor environments) and the need for accurate modeling to help determine protections, require more industry model development prior to selecting a default propagation modeling method for use in the 3.5 GHz Band. We encourage the industry to continue to pursue creative approaches to propagation modeling that accurately account for real world effects across a variety of terrains and deployment scenarios.

e. Other Issues

(i) Background

282. Policy and Methods for Adjudicating Demands for Increased Spectrum Use. In the *Second FNPRM,* we sought comment on fair and non-discriminatory methods of adjudicating requests for increased spectrum use at a location that would exceed the protection threshold for an FSS earth station receiver. We also sought comment on solutions that avoid caps on CBSD service deployment, while protecting FSS earth stations from harmful interference.

283. WinnForum continues to study the issue of aggregate interference margin allotment and did not propose a specific methodology for addressing requests that could exceed the aggregate interference threshold for a particular FSS earth station. WinnForum members agree that aggregate interference protection for FSS earth stations is independent of the mechanism of application of those limits.

284. SIA argues that protection of incumbent FSS is not possible with unconstrained interference growth and, as such, some maximum aggregate interference limit must be enforced. According to SIA, enforcement of such aggregate interference caps may result in a cap on CBSD deployment in a given geographic area or frequency range. Google argues that a variety of approaches to managing aggregate interference from multiple CBSDs may be suitable, and it is neither necessary nor beneficial to impose one particular method in the Commission's rules. According to Google, it may be appropriate to impose some level of power adjustment in cases of extreme congestion, but the methodology for doing so need not be universal and can be better addressed by the Commission through the SAS approval process. Google states that regardless of how the Commission chooses to protect aggregate effects, it is important for the Commission to do so.

285. Methods for Ensuring That End User Devices Do Not Interfere with FSS. In the *Second FNPRM,* we sought comment on reasonable methods for ensuring that the mobility, location, and orientation of End User Devices are managed effectively to avoid excessive interference to in-band FSS earth stations, while avoiding a mandate for geo-location requirements on End User Devices. As discussed in detail in section III(E), commenters were sharply divided on the issue of mandatory geo-location for End User Devices.

286. Federated Wireless also submitted a comment asking the Commission to take note of the approach to managing interference from End User Devices that was suggested in the CSMAC Report. According to Federated Wireless, "[i]n the CSMAC Report, the EIRP of each UE used to compute the aggregate interference level is randomly selected in accordance with the Cumulative Distribution Function (CDF) curves, generated through Monte-Carlo simulations based on realistic UE operating conditions." Federated Wireless asserts that this is a useful corollary to the methods that the SAS will use to calculate potential interference from End User Devices in the 3.5 GHz Band.

(ii) Discussion

287. Policy and Methods for Adjudicating Requests for Increased Spectrum Use. We decline to adopt a specific policy for adjudicating demands for increased spectrum use. We agree with Google that that there are multiple methods and tools at the disposal of SAS Administrators (*e.g.,* power control, GAA frequency reassignment, etc.) to ensure that the FSS protection criteria established in our rules are not exceeded. We believe that SAS Administrators should be permitted flexibility in addressing these issues within the framework established by the Commission's rules. We direct WTB and OET to carefully review any

such approaches submitted as part of the SAS approval process.

288. Methods for Ensuring That End User Devices Do Not Interfere with FSS. As discussed in detail in section III(F), we will not adopt a mandate for geo-location of End User Devices. We believe that CBSDs—which operate at significantly higher power levels than End User Devices—will be the primary sources of potential interference in the band and, therefore, they are the devices that should be monitored for interference protection purposes. However, we recognize that some commenters have raised concerns about potential interference from End User Devices. In light of the low power permitted for these devices, we do not believe that it is necessary at this time to adopt rules to directly address potential interference from End User Devices. However, we encourage the industry to develop standards for analyzing and modeling interference from End User Devices. Similarly, we encourage SAS administrators to take such models into account when developing interference protection strategies. We direct WTB and OET to review such approaches during and after the SAS approval process and take appropriate steps to address any such interference if it arises.

2. C-Band FSS Protection

a. Background

289. As described in detail in section III(E) above, in the *3.5 GHz R&O,* we adopted stringent out-of-band emission limits for protection of adjacent C-band FSS earth stations. In the *Second FNPRM,* we sought further comment on whether any measures in addition to the OOBE limits are needed to protect C-Band FSS earth stations from out-of-band interference from Citizens Broadband Radio Service users and, if so, what those measures should be. We also sought comment as to whether the protection criteria for out-of-band FSS earth stations should be the same or different than for in-band FSS earth stations.

290. SIA argues that C-Band earth stations should be protected from OOBE from CBSDs and End User Devices based on limiting any increase in the noise floor to no more than 1%, equivalent to I/N of −20 dB, consistent with ITU–R S.1432–1. GCI supports this position and argues that this strict protection criteria is necessary to protect critical services provided by C-Band users. As described in section III(C) above, SIA also argued in its petition for reconsideration that significant separation distances would be needed to protect FSS earth stations. As part of its petition, SIA submitted a technical analysis by RKF Engineering using an out-of-band interference criterion of I/N = −23 dB. In addition, SIA notes that C-Band satellites are required to locate their TT&C operations close to the 3700 MHz band-edge.

291. Google argues that the Commission should reject SIA's suggestion that C-Band FSS earth stations be protected at a level equivalent to an I/N of −20 dB. Google argues that this approach would limit noise floor degradation to a virtually unmeasurable 0.04 dB and limit interference temperature to an amount equivalent to about ''half of the cosmic microwave background left over from the Big Bang.'' Put another way, Google claims that, using SIA's criterion, ''satellite earth stations will experience harmful interference if exposed to the amount of radiated emissions received by an omnidirectional antenna placed approximately 10 cm from a cup of coffee.'' According to Google, such grossly conservative interference thresholds would needlessly constrain deployment of CBSDs in the 3.5 GHz Band by restricting harmless emissions.

292. The Content Interests also filed in support of expansive protections for C-Band FSS earth stations, in addition to the OOBE limits adopted in the *3.5 GHz R&O.* They contend that, since C-Band operations play a critical role in delivering television content to hundreds of millions of people, any parameters the Commission adopts for operations in the 3.5 GHz Band must be carefully analyzed to ensure C-Band operations do not experience interference. The Content Interests also submitted a study by Alion to update two previous studies submitted in this proceeding on the effects of Citizens Broadband Radio Service operations on C-Band FSS earth stations, to account for the technical rules adopted in the *3.5 GHz R&O,* including the OOBE limits adopted in that order. The new Alion study asserts that: Protecting a C-Band earth station from a single CBSD would require a protection distance of up to 9.63 km for Category A devices and up to 16.4 km for Category B devices (rural or non-rural). Alion contends that, in one scenario which looked at potential anomalous propagation effects, the required protection distance could be more than 125 km for Category B rural and non-rural devices. Thus, Alion concludes that future Citizens Broadband Radio Service operations must be coordinated with C-Band FSS earth stations to prevent harmful interference to C-Band operations. Alion also claims that the protection distances for multiple CBSDs could be significantly larger than for single-entry cases and that the addition of a few dozen CBSDs could double or triple the required protection distance. Alion asserts that SAS(s) must be sophisticated enough to know how many CBSDs are deployed in an area and appropriately extend the protection zone such that aggregated emissions do not violate the interference threshold.

293. Federated Wireless agrees with the Content Interests on the importance of protecting incumbent C-Band operations from any harmful interference that may be generated by CBSDs. It states that both knowledge of specific propagation conditions and providing accurate CBSD and incumbent earth station radio configuration information to the SAS is vital for spectrum sharing and incumbent protection. However, Federated Wireless notes that the aggregate interference calculations will not be overly complex, because they need only to be focused on a discrete site. As such, Federated Wireless argues that the calculations needed to determine FSS earth station protections are simpler than the mechanisms that will be implemented to protect PALs which require protection around an entire contour. Federated Wireless also disagrees with the assumptions and engineering inputs applied in the Alion analysis. Federated Wireless contends that these assumptions and inputs are overly conservative and, while theoretically possible, in no way reflect expected operating conditions for either C-Band FSS earth stations or Citizens Broadband Radio Service users. Federated Wireless argues that the Alion analysis compounds worst-case assumptions that do not accurately reflect the likely interference environment in the 3.5 GHz Band, leading to wholly unrealistic interference computations. According to Federated Wireless, these worst-case assumptions include: (1) Unclear application of the propagation model; (2) misleading application of I/N thresholds; (3) unrealistic FSS elevation angle assumptions; (4) excessive CBSD installation height; (5) flawed application of device emission masks; (6) worst-case CBSD operating frequencies; and (7) overly conservative interference thresholds. Federated also cites a warning recently expressed by the Commission's Technological Advisory Council of the pitfalls of employing worst-case assumption in interference analysis (*i.e.,* ''Selecting single values, often extreme 'worst case'

values, is not representative of actual risk'').

294. Google also takes issue with the assumptions and methodologies put forth by the Content Interests and Alion. Google contends that the Content Interests and Alion's analysis depends on two mistaken presumptions: (1) That C-Band FSS earth stations are entitled to geographic protection in addition to the stringent OOBE limits established in the *3.5 GHz Order;* and (2) that worst-case assumptions should be used to establish such protections. Google also questions the validity of the Alion report's conclusions based on the fact that C-Band FSS earth stations are frequently deployed in close proximity to active 3650–3700 MHz band transmitters. Google argues that C-Band FSS earth stations are not necessarily entitled to geographic protection of their sites in addition to the OOBE limits adopted by the Commission and, if such protections are adopted, they should be based on known characteristics of FSS earth stations and CBSDs, not worst-case assumptions.

295. There is no agreement among the members of the WinnForum on an appropriate protection level for C-Band FSS earth stations. However, consistent with its approach to the protection of in-band FSS earth stations, WinnForum opposes the imposition of default protection areas and supports a coordination approach based on terrain, clutter, and other real-world considerations.

b. Discussion

296. As discussed in detail in section III(E), we continue to believe that our stringent OOBE limits will act as the primary means of protecting C-Band FSS earth station operations. Moreover, for reasons discussed below, we are not persuaded by the commenters who assert that measures in addition to those OOBE limits are needed to provide adequate protection from interference to C-Band FSS earth station operations, in most cases. However, we recognize that, in some situations, additional measures may be appropriate for earth stations performing critical TT&C functions. These protections will be determined consistent with the processes and protection levels used to determine protection areas for FSS earth stations in the 3600–3700 MHz band. In addition, as described in section III(H)(2), we adopt measures to facilitate communication and coordination among Citizens Broadband Radio Service users, C-Band FSS licensees, and SAS Administrators to effectively prevent and address any interference issues that may arise. Finally, we emphasize that any C-Band FSS earth station licensees seeking protection must submit an annual registration consistent with section 96.17 of the Commission's rules or upon making changes to any of the operational parameters listed in that section (47 CFR 96.17).

297. We disagree with assertions made by SIA, GCI, and the Content Interests that all C-band FSS earth stations must be protected by geographic protection zones to prevent interference to the services provided by the operators of these earth stations. We address the concerns raised by these commenters about the potential for harmful interference into C-Band FSS earth stations with the stringent OOBE limits adopted in the *3.5 GHz R&O* and affirmed in section III(E) above and with new rules protecting TT&C earth stations and facilitating coordination between Citizens Broadband Radio Service users and C-Band FSS licensees. We also note that creating mandatory geographic protection zones to protect FSS earth station licensees from co-primary commercial operations in an adjacent band would be unprecedented. Indeed, the Commission declined to extend such protections to licensees in the C-Band when it adopted rules governing the 3650–3700 MHz Band Wireless Broadband Service (47 CFR 90.1301 through 90.1338). Accordingly, consistent with Commission precedent, we will not require SAS Administrators to establish geographic protection areas for C-Band FSS earth station licensees.

298. While we do not believe that geographic protections should be mandatory for all C-Band FSS earth stations, we do agree that it would be appropriate to extend additional protections to FSS earth stations used for TT&C using the same methods used to protect FSS earth stations in the 3.5 GHz Band. As SIA correctly notes, the Commission requires FSS operators to perform TT&C operations in band edge spectrum (47 CFR 25.202(g)). As a result, according to SIA, C-Band satellites frequently rely on a telemetry carrier near 3700 MHz. We recognize the critical importance of these TT&C functions to ensuring the safe operation and control of C-Band satellite systems and, accordingly, we will require SAS Administrators to implement and enforce additional protection criteria for these earth stations. Consistent with our approach to protecting in-band FSS earth stations, SAS Administrators will be required to model protection areas based on a median I/N of −12 dB at earth stations with TT&C earth stations operating in accordance with section 25.202(g) (47 CFR 25.202(g)). We find that utilizing the same protection criteria for in-band FSS earth stations and C-Band TT&C earth stations is in the public interest and consistent with the Commission's goals for this band. In addition, because these TT&C functions are performed from relatively few C-Band earth stations, the additional protection we are providing should not present a significant impediment to deployment in the 3.5 GHz Band or a significant additional burden for SAS Administrators. C-Band earth stations used for TT&C functions will be protected using the same processes and technological assumptions used to protect earth stations in the 3600–3700 MHz band, as described in section IV(C)(1). In light of our conclusions below on the potential for interference, we believe this approach strikes the appropriate balance between the concerns of C-Band licensees and the need to create an environment conducive to robust deployment in the 3.5 GHz Band.

299. Though we find that C-Band earth stations used for TT&C should be afforded protection based on a maximum I/N at their receivers, we do not agree with the methodology or results of the Alion report. As Federated Wireless argues, the Alion report submitted by the Content Interests relies on a series of worst case assumptions and overly conservative protection thresholds in reaching its conclusions about the requisite protection distances for C-Band FSS earth stations. We also take note of the TAC's recent assertion, cited by Federated Wireless, that "selecting single values, often extreme 'worst case' values, is not representative of actual risk." We agree and believe that Alion's worst case assumptions combine to predict unrealistic and overly restrictive protection areas which would stifle investment and disincentivize new deployments. Protecting C-Band earth stations in the manner suggested by Alion would be inconsistent with our approach to in-band FSS protection and would lead to inefficient spectrum use. As such—just as with protection of in-band FSS earth stations—we are basing protection of C-Band FSS earth stations used for TT&C on real world deployment scenarios and operational conditions.

300. As evidenced by our adoption of an interference limit equal to an I/N of −12 dB, we also find that SIA and GCI's request to protect adjacent band FSS based on an I/N of −20 dB would lead to overprotection of C-Band FSS earth stations and is not reflective of the actual, real world protection requirements of C-Band earth stations. Similarly, we reject SIA's modelling

approach which is based on an even more stringent I/N of −23 dB. We agree with Google that this level of protection is unnecessary and would likely overprotect C-Band FSS earth stations to a significant degree. Indeed, Google contends that limiting emissions at the earth station receiver to an I/N of −20 dB would limit noise floor degradation to a virtually unmeasurable 0.04 dB and limit interference temperature to an amount equivalent to about "half of the cosmic microwave background left over from the Big Bang." From the record, it is unclear why adjacent band receivers should be protected to such a stringent degree. Indeed, we can see no compelling public interest reason to provide a greater degree of protection to services in an adjacent band than we provide to co-primary services in the same band. Accordingly, we find that the I/N limits advocated by SIA, GCI, and the Content Interests are excessive and would lead to over-protection of FSS earth stations in the C-Band. Such excessive protection would be inconsistent with the Commission's desire to promote sharing and encourage the robust development of innovative services in the 3.5 GHz Band. Rather, we find that earth stations eligible for additional protections under the rules (*i.e.,* those with TT&C operations just above 3700 MHz) should be protected using the same I/N limit and methodology used to protect FSS earth stations in the 3.5 GHz Band.

301. While we do not believe that the public interest would be served by requiring geographic protection of all C-Band FSS earth stations, elsewhere in this order we adopt additional measures that will help to address and mitigate the interference concerns raised by commenters. Specifically, as described in section III(H), we adopt a rule requiring SAS Administrators to accept and respond promptly to reports of interference or requests for additional protection from C-Band licensees (47 CFR 96.17(f)). We encourage SAS Administrators to take appropriate steps to address any requests or complaints that they receive, and direct WTB and OET to review complaint receipt and resolution procedures during the SAS approval process. We emphasize that the Commission retains ultimate authority over and responsibility for addressing interference issues and conflicts between licensees. If interference issues are not addressed in a satisfactory matter, the Commission may impose additional requirements to ensure timely mitigation and resolution.

302. Finally, we note that, consistent with the approach used to protect in band FSS earth stations described in section IV(C)(1), the Commission's rules assume the use of commercially available filters to mitigate interference from OOBE. C-Band FSS earth stations seeking protection under section 96.17 (47 CFR 96.17) of the Commission's rules should employ appropriate filters to mitigate interference issues. Any protections developed and implemented by SASs—whether mandatory protections of earth stations used for TT&C or protections developed by an SAS in response to a coordination request under section 96.17(f)—will assume that such filters are in use (47 CFR 96.17(f)). While we acknowledge that filters may not address all interference issues, there is significant evidence in the record that filters are readily available at a reasonable price and can help alleviate interference concerns in many cases. We expect that, in an environment with multiple co-primary services in adjacent bands, the responsibility for interference mitigation and avoidance will be shared among the parties.

3. Device Authorization

a. Background

303. In the *Second FNPRM* we sought comment on Google's suggestion that market incentives may be feasible to encourage industry to deploy radios with improved (lower) adjacent emissions. We sought comment on how such protection could be practically implemented without burdensome equipment authorization requirements, necessitating changes to our part 2 rules (47 CFR 2.1, *et seq.*), and whether it could be achieved by defining a small number of classes of devices that are distinguished by increasingly stringent OOBE limits.

304. In response, Google reiterated its argument that by allowing devices with better emissions performance to operate in closer proximity to FSS operations the Commission would foster investment in devices with improved OOBE characteristics. Google stresses that CBSDs would not be required to meet OOBE requirements that are more stringent than the ones set forth in part 96 but manufacturers should be given the option to build devices that outperform the baseline requirements. In turn, these devices could access spectrum in geographic areas not accessible to devices with standard OOBE performance.

305. Google claims that adopting such an approach to OOBE will require only minor adjustments to the Commission's equipment certification framework and proposes specific changes to this process. According to Google, certification reports should: (1) Specify actual levels of OOBE; and (2) state the minimum level, in dB, by which the device is lower than the regulatory limits (47 CFR 96.41(e)). The test lab should also categorize the device within a class based on how much it reduces OOBE beyond what is required and the device's class should be included as a field in the FCC's certification database.

306. Federated Wireless states that it notionally supports Google's proposal but urges the Commission to carefully review the proposed modifications to our equipment authorization rules before making changes that could hinder commercial development in the 3.5 GHz Band. However, Federated Wireless also contends that it is possible that Google's proposal for a process to categorize better performing devices could be achieved by modifying the part 96 rules to state that when equipment makers demonstrate conformance of CBSDs and end user devices pursuant to other rule parts, they should provide the supporting data to demonstrate conformance rather than just a pass/fail result.

307. SIA and Qualcomm both address this issue, as well. SIA cautions that that "relying on market incentives could undermine device quality, since competitive pricing can eliminate the price premium needed to achieve and maintain high quality in device production." Further, SIA states that regardless of whether manufacturers choose to market devices that perform better than is required by OOBE limits, the devices would still need to be certified to provide consumers with adequate assurances about a given device's performance. Qualcomm expressly asks the Commission to reject Google's proposal, arguing that since the OOBE limit "just 20 MHz outside the band edges will force 3.5 GHz equipment, at least mobile devices, to implement power back-off, the FCC should not implement even tighter OOBE limits at the upper edge of the band for certain classes of devices to protect C-band FSS earth stations as described in the *Second FNPRM.*" Qualcomm argues that developing multiple classes of devices would challenge equipment designs and likely force mobile devices to use significantly less power and/or operate well within the 3.5 GHz band edge to comply. Moreover, Qualcomm argues that should the Commission consider implementing classes of devices with tighter OOBE limits, it should first "verify that satellite receiver blocking is 'not' the actual limiting factor, in which case more stringent OOBE limits would not help and would be an unnecessary

regulatory burden." Google counters Qualcomm's arguments claiming that Qualcomm appears to misunderstand Google's proposal, because no CBSD would be required to meet more stringent OOBE requirements than set forth in part 96. Instead, manufacturers would have the option to build devices that outperform baseline requirements.

b. Discussion

308. We decline to make changes to our existing equipment certification process or the rules governing OOBE power levels for CBSDs and End User Devices. We must balance our over-arching goal of encouraging innovation with the fact that the Citizens Broadband Radio Service and the devices that will operate in the band are in the nascent stages of development. As such, the rules that govern them must not be overly complicated and must adequately protect incumbents. At this stage, we believe that Google's proposal would add unnecessary complication to our device authorization process, particularly in the early stages of testing equipment that will operate in the Citizens Broadband Radio Service. Further, there is no specific data that shows this approach would not create a risk to incumbent operations and, as noted by Qualcomm, it may not be effective at all if satellite receiver blocking is more limiting than OOBE.

309. We disagree with Google that its proposal would only require minor changes to our equipment authorization process or that such changes would be easily implementable. As noted by Federated Wireless, the suggested modifications could require the Commission to conduct an additional rulemaking. Such a rulemaking—and any new certification procedures adopted therein—could delay commercial deployment in the Citizens Broadband Radio Service. Therefore, on balance, we find that it is in the public interest to proceed using the current device certification rules to ensure that service is made available quickly and without unintended consequences. However, we remain open to the possibility of variable device certifications for different OOBE capabilities and we may revisit this issue in the future.

V. Procedural Matters

A. Regulatory Flexibility Analysis

310. Pursuant to the Regulatory Flexibility Act of 1980, as amended, the Commission included a Final Regulatory Flexibility Analysis in the Report and Order (see *https://ecfsapi.fcc.gov/file/60001755029.pdf*).

B. Paperwork Reduction Act

311. This Order on Reconsideration and Second Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Final Regulatory Flexibility Analysis

312. As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 603–604), as amended (RFA), the Commission has prepared this Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities by the policies and rules adopted in this *Second Report and Order and Order on Reconsideration* (*Second Order and Order on Reconsideration*), as applicable. The Commission will send a copy of this *Second Order* including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Second Order and Order on Reconsideration* and FRFA (or summaries thereof) will be published in the **Federal Register**.

313. As required by the RFA, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the Notice of Proposed Rulemaking and Order (*NPRM*), Further Notice of Proposed Rulemaking (*FNPRM*) and Second Further Notice of Proposed Rulemaking (*Second FNPRM*) and a Final Regulatory Flexibility Analysis (FRFA) in the *R&O*. The Commission sought written public comment on the proposals in the NPRM and FNPRM, including comment on the IRFA. No comments were filed addressing the IRFA. This present FRFA conforms to the RFA.

C. Need for, and Objectives of, the Rules

314. In this *Second Order* and Order on Reconsideration we finalize the rules governing the innovative Citizens Broadband Radio Service in the 3550–3700 MHz band (3.5 GHz Band). In the *R&O*, the Commission adopted rules for commercial use of the 3.5 GHz Band, including technical and use rules and interference protection measures, which was used for Department of Defense Radar services and commercial fixed Satellite Service (FSS) earth stations (space-to-earth) prior creation the Citizens Broadband Radio Service.

315. Facing ever-increasing demands of wireless innovation and constrained availability of clear sources of spectrum, the Citizens Broadband Radio Service is an opportunity to add much-needed capacity through innovative sharing. The *R&O* represented a major contribution toward the Commission's goal of making 500 megahertz newly available for broadband use and will help to unleash broadband opportunities for consumers throughout the country, particularly in areas with overburdened spectrum resources. Through this *Second Order,* we finalize the regulatory scheme we created in 2015, putting in place the last rules necessary for this service to become commercially available. These rules address the definition of "use" by Priority Access Licensees, access to the 3.5 GHz Band via secondary markets, and FSS protection criteria.

316. The Citizens Broadband Radio Service takes advantage of advances in technology and spectrum policy to dissolve age-old regulatory divisions between commercial and federal users, exclusive and non-exclusive authorizations, and private and carrier networks. The regulatory framework takes from recommendations from the President's Council of Advisors on Science and Technology (PCAST) and substantial engagement and input from stakeholders representing a cross section of the communications, technology, and public interest realms.

317. The comprehensive regulatory scheme adopted in the *R&O* included specific licensing, technical, and service rules to enable dynamic sharing between three tiers of users in the 3.5 GHz Band. The Spectrum Access System (SAS) is the advanced frequency coordinator (or coordinators) necessary to assign rights and maximize efficiency in the band. The SAS(s) will incorporate information from the Environmental Sensing Capability (ESC), which will be used to increase available spectrum in coastal areas while continuing to protect incumbent Department of Defense radar systems.

318. In this *Second Order and Order on Reconsideration,* we reaffirm this regulatory scheme, and deny several petitions for reconsideration of various aspects of the *R&O*. We also grant certain requests for reconsideration, including the following: We increase the power limit for non-rural Category B CBSDs to that applicable in rural areas,

provide greater flexibility on how to measure and direct the power, revise our rules to make clear that SASs must be capable of receiving and responding to interference complaints from FSS earth station licensees, and allow a single PAL to be issued in License Areas located in Rural Areas without an auction. Finally, we define what PAL uses serve to preclude GAA uses, slightly modify our streamlined spectrum leasing and assignment procedures for application in the 3.5 GHz band, decline to permit partitioning and disaggregation in the band, and provide for interference protections for FSS earth stations in this band and the adjacent C-band. We developed a comprehensive approach intended to balance consideration of complex issues and competing considerations involved in creating a sharing regime in this band, and each rule is a necessary component. We reaffirm our commitment to add much needed capacity spectrum to the marketplace through innovative sharing rules and techniques, and believe the rules established in the *R&O,* as amended by the *Second Order* and Order on Reconsideration are the best means to do so.

319. As a result of the Commission's actions in the *R&O* and *Second Order and Order on Reconsideration,* small business will have access to spectrum that is currently unavailable to them. The potential uses for this spectrum are vast. For example, wireless carriers can deploy small cells on a GAA basis where they need additional capacity. Real estate owners can deploy neutral host systems in high-traffic venues, allowing for cost-effective network sharing among multiple wireless providers and their customers. Manufacturers, utilities, and other large economic sectors, can construct private wireless broadband networks to automate industrial processes that require some measure of interference protection and yet are not appropriately outsourced to a commercial cellular network. All of these applications can potentially share common wireless technologies, providing economies of scale and facilitating intensive use of the spectrum. Further, small businesses can access this spectrum on the secondary market. The Commission's actions in the *Second Order* and Order on Reconsideration thus constitute a significant benefit for small businesses.

D. Legal Basis

320. The actions are authorized under sections 1, 2, 4(i), 4(j), 5(c), 302a, 303, 304, 307(e), and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 302a, 303, 304, 307(e), and 316.

E. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

321. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

322. Small Businesses, Small Organizations, and Small Governmental Jurisdictions. Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the proposals under consideration. As of 2010, there were 28.2 million small businesses in the United States, according to the SBA. Additionally, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,761 entities may qualify as "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

323. Wireless Telecommunications Carriers (except satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, show that there were 1,383 firms in this category that operated for the entire year. Of this total, 1,368 had employment of 999 or fewer, and 15 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our actions.

324. Satellite Telecommunications and All Other Telecommunications. Satellite telecommunications service providers include satellite and earth station operators. Since 2007, the SBA has recognized two census categories for satellite telecommunications firms: "Satellite Telecommunications" and "Other Telecommunications." Under the "Satellite Telecommunications" category, a business is considered small if it had $32.5 million or less in annual receipts. Under the "Other Telecommunications" category, a business is considered small if it had $32.5 million or less in annual receipts.

325. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2007 show that there were a total of 512 satellite communications firms that operated for the entire year. Of this total, 482 firms had annual receipts of under $25 million.

326. The second category of Other Telecommunications is comprised of entities "primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet

protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. We anticipate that some of these "Other Telecommunications firms," which are small entities, are earth station applicants/licensees that might be affected by our rule changes.

327. While our rule changes may have an impact on both earth and space station applicants and licensees, space station applicants and licensees rarely qualify under the definition of a small entity. Generally, space stations cost hundreds of millions of dollars to construct, launch and operate. Consequently, we do not anticipate that any space station operators are small entities that would be affected by our actions.

328. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for firms in this category, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2010, there were a total of 810 establishments in this category that operated for the entire year. Of this total, 787 had employment of under 500, and an additional 23 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

F. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

329. The projected reporting, recordkeeping, and other compliance requirements resulting from the *Second Order and Order on Reconsideration* will apply to all entities in the same manner, consistent with the approach we adopted in the *R&O.* It is possible that small entities will need to hire attorneys and engineers on a contract basis to comply with the rules. We believe that while our proposals require small entities to comply with the rules established for the Citizens Broadband Radio service, they will receive the ability to access spectrum that is currently unavailable to them. On balance, this will constitute a significant benefit for small business.

330. Order on Reconsideration. Under the amended rules, FSS earth station licensees may request additional protection from SAS Administrators to prevent harmful interference and in order to provide additional protection for out-of-band earth stations with telemetry, tracking, and control (TT&C) responsibilities, we extend the annual registration requirement to these sites.

331. *Second Order.* Under the new rules, Priority Access Licensees may transfer, assign, or lease their spectrum on the secondary market. In order to benefit from the streamlined approach to spectrum manager leasing applicable to the 3.5 GHz Band, lessees may seek certification from the Commission that they are qualified to act as a Commission licensee and licensees must notify the SAS of the leasing arrangement before the lessee commences service. This process is similar to the certification and notification requirements to invoke immediate processing under existing spectrum manager leasing rules. Further, we extend the current process for transfers, assignments, and de facto leases to the 3.5 GHz Band. The reporting requirements are no different from the reporting requirements already required for all other services to which our secondary market policies apply.

332. Under the new rules, as part of the requirements for defining PAL Protection Areas, Priority Access Licensees must notify the SAS if a previously activated CBSD is no longer in use and may choose to self-report protection contours smaller than the default protection contour to the SAS.

G. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

333. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

334. Order on Reconsideration. The reporting, recordkeeping, and other compliance requirements resulting from this order will apply to all entities in the same manner. The Commission believes that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. The rules the Commission adopts should benefit small entities by giving them more information, more flexibility, and more options for gaining access to valuable wireless spectrum. All Citizens Broadband Radio Service Devices (CBSDs) must comply with the amended technical and operational requirements aimed at preventing interference to Incumbent Access and Priority Access users, including revised power limits non-rural Category B CBSDs and elimination of conducted power limits for all CBSDs and the revised method for defining a Priority Access Licensee's protection area. We believe changes will provide operational flexibility to Priority Access Licensees and GAA users, which, regardless of size, must operate CBSDs that meet these technical requirements.

335. *Second Order.* The reporting, recordkeeping, and other compliance requirements resulting from the *Second Order* will apply to all entities in the same manner. The Commission believes that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. The rules the Commission adopts should benefit small entities by giving them more information, more flexibility, and more options for gaining access to valuable wireless spectrum. Specifically, the definition of use adopted in the *Second Order* leverages advances in computing technology and economics to determine protection contours by adopting a SAS-based engineering approach, while allowing Priority Access Licensees to report their Protection Areas based on actual network deployment. Establishing a baseline protection criteria will allow General Authorized Access users reasonable opportunities for additional access to the band. We considered adopting an economic or hybrid economic/engineering definition of use but determined an engineering approach would promote the most efficient use of the band by all entities. Further, we permit access to the 3.5 GHz Band

through secondary markets and adopt a light-touch version of our leasing rules that will allow Priority Access Licensees to lease any portion of their spectrum or geographic area, outside of its PAL Protection Area, for any bandwidth or duration period of time within the terms of the license. We believe that this streamlined approach to leasing will benefit all entities, including small entities, by allowing them to gain immediate access to spectrum to implement their business plans with reduced regulatory delay and transaction costs.

H. Federal Rules That May Duplicate, Overlap, or Conflict With the Final Rules

336. None.

I. Report to Congress

337. The Commission will send a copy of the *Second Report and Order and Order on Reconsideration,* including the FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy the *Second Report and Order and Order on Reconsideration,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (5 U.S.C. 603(a)). A copy of this *Second Report and Order and Order on Reconsideration* and FRFA (or summaries thereof) will be published in the **Federal Register** (5 U.SC. 603(a)).

J. Congressional Review Act

338. The Commission will send a copy of this Order on Reconsideration and Second Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), see 5 U.S.C. 801(a)(1)(A).

VI. Ordering Clauses

339. Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i), 4(j), 5(c), 302, 303, 304, 307(e), and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 302, 303, 304, 307(e), and 316, that this Order on Reconsideration and Second Report and Order in GN Docket No. 12–354 *is adopted* and the rules shall become effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for those rules and requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, which shall become effective after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date.

340. *It is further ordered,* pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, that the petitions for reconsideration of the Report and Order and Second Further Notice of Proposed Rulemaking are *denied,* except to the extent set forth in this Order on Reconsideration and Second Report and Order.

341. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order on Reconsideration and Second Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Telecommunications.

47 CFR Part 2

Communications equipment, Telecommunications.

47 CFR Part 96

Telecommunications, Radio.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, and 96 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79, *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

■ 2. Section 1.9005 is amended by adding paragraph (p) to read as follows:

§ 1.9005 Included services.

* * * * *

(p) The Citizens Broadband Radio Service in the 3550–3650 MHz band (part 96 of this chapter).

* * * * *

■ 3. Section 1.9020 is amended by revising paragraph (e) to read as follows:

§ 1.9020 Spectrum manager leasing arrangements.

* * * * *

(e) *Notifications regarding spectrum manager leasing arrangements.* A licensee that seeks to enter into a spectrum manager leasing arrangement must notify the Commission of the arrangement in advance of the spectrum lessee's commencement of operations under the lease. Unless the license covering the spectrum to be leased is held pursuant to the Commission's designated entity rules and continues to be subject to unjust enrichment requirements and/or transfer restrictions (see §§ 1.2110 and 1.2111, and §§ 24.709, 24.714, and 24.839 of this chapter) or restrictions in § 1.9046 and § 96.32 of this chapter, the spectrum manager lease notification will be processed pursuant to either the general notification procedures or the immediate processing procedures, as set forth herein. The licensee must submit the notification to the Commission by electronic filing using the Universal Licensing System (ULS) and FCC Form 608, except that a licensee falling within the provisions of § 1.913(d) may file the notification either electronically or manually. If the license covering the spectrum to be leased is held pursuant to the Commission's designated entity rules, the spectrum manager lease will require Commission acceptance of the spectrum manager lease notification prior to the commencement of operations under the lease.

* * * * *

■ 4. Section 1.9046 is added to read as follows:

§ 1.9046 Special provisions related to spectrum manager leasing in the Citizens Broadband Radio Service.

(a) *Scope.* Subject to § 96.32 of this chapter, a Priority Access Licensee, as defined in § 96.3 of this chapter, is permitted to engage in spectrum manager leasing for any portion of its spectrum or geographic area, outside of the PAL Protection Area, for any bandwidth or duration period of time within the terms of the license with any entity that has provided a certification to the Commission in accordance with this section or pursuant to the general notification procedures of § 1.9020(e).

(b) *Certification.* The lessee seeking to engage in spectrum manager leasing pursuant to this section must certify with the Commission that it meets the same eligibility and qualification requirements applicable to the licensee before entering into a spectrum manger leasing arrangement with a Priority Access Licensee, as defined in § 96.3 of this chapter and maintain the accuracy of such certifications.

(1) Priority Access Licensees, as defined in § 96.3 of this chapter, are

deemed to meet the certification requirements.

(2) Entities may also certify by using the Universal Licensing System and FCC Form 608.

(c) *Notifications regarding spectrum manager leasing arrangements.* Prior to lessee operation, the licensee seeking to engage in spectrum manager leasing pursuant to § 1.9020(e) must submit notification of the leasing arrangement to the Spectrum Access System Administrator, as defined in § 96.3 of this chapter, by electronic filing. The notification shall include the following information:

(1) Lessee contact information including name, address, telephone number, fax number, email address;

(2) Lessee FCC Registration Number (FRN);

(3) Name of Real Party in Interest and related FCC Registration Number (FRN);

(4) The specific spectrum leased (in terms of amount of bandwidth and geographic area involved) including the call sign(s) affected by the lease; and

(5) The duration of the lease.

(d) *Expiration, extension, or termination of a spectrum leasing arrangement.* (1) Absent Commission termination or except as provided in paragraph (d)(2) or (3) of this section, a spectrum leasing arrangement entered into pursuant to this section will expire on the termination date set forth in the spectrum leasing notification.

(2) A spectrum leasing arrangement may be extended beyond the initial term set forth in the spectrum leasing notification for an additional period not to exceed the term of the Priority Access License, as defined in § 96.3 of this chapter, provided that the licensee notifies the Spectrum Access System Administrator, as defined in § 96.3 of this chapter, of the extension in advance of operation under the extended term and does so pursuant to the notification procedures in this section.

(3) If a spectrum leasing arrangement is terminated earlier than the termination date set forth in the notification, either by the licensee or by the parties' mutual agreement, the licensee must file a notification with the Spectrum Access System Administrator, no later than ten (10) days after the early termination, indicating the date of the termination. If the parties fail to put the spectrum leasing arrangement into effect, they must so notify the Spectrum Access System Administrator as promptly as practicable.

(e) The Commission will place information concerning the commencement, an extension or an early termination of a spectrum leasing arrangement on public notice.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 5. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 6. Section 2.106 is amended in the footnote for US107 by revising paragraph (a) to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

United States (US) Footnotes

* * * * *

US107 * * *

(a) Earth stations authorized prior to, or granted as a result of an application filed prior to July 23, 2015, and constructed within 12 months of initial authorization may continue to operate on a primary basis. Applications for modifications to such earth station facilities filed after July 23, 2015 shall not be accepted, except for repair or replacement of equipment; changes in polarization, antenna orientation, or ownership; and increases in antenna size for interference mitigation purposes.

* * * * *

PART 96—CITIZENS BROADBAND RADIO SERVICE

■ 7. The authority citation for part 96 continues to read as follows:

Authority: 47 U.S.C. 154(i), 303, and 307.

■ 8. Section 96.3 is amended by adding the definition for "PAL Protection Area" in alphabetical order to read as follows:

§ 96.3 Definitions.

* * * * *

PAL Protection Area. The area within the Priority Access Licensee's default protection contour, as calculated by the SAS in accordance with § 96.25 (or smaller, self-reported protection contour). This area will be protected from interference in accordance with §§ 96.25 and 96.41(d).

* * * * *

■ 9. Section 96.15 is amended by revising paragraphs (a)(4) and (b)(4) to read as follows:

§ 96.15 Protection of federal incumbent users.

(a) * * *

(4) Within 300 seconds after the ESC communicates that it has detected a signal from a federal system in a given area, or the SAS is otherwise notified of current federal incumbent use of the band, the SAS must either confirm suspension of the CBSD's operation or its relocation to another unoccupied frequency, if available. If the President of the United States (or another designated Federal Government entity) issues instructions to discontinue use of CBSDs pursuant to 47 U.S.C. 606, SAS Administrators must instruct CBSDs to cease operations as soon as technically possible.

* * * * *

(b) * * *

(4) Within 300 seconds after the ESC communicates that it has detected a signal from a federal system in a given area, or the SAS is otherwise notified of current federal incumbent use of the band, the SAS must either confirm suspension of the CBSD's operation or its relocation to another unoccupied frequency. If the President of the United States (or another designated Federal Government entity) issues instructions to discontinue use of CBSDs pursuant to 47 U.S.C. 606, SAS Administrators must instruct CBSDs to cease operations as soon as technically possible.

■ 10. Section 96.17 is amended by revising the section heading and paragraphs (a), (b), and (e) and by adding paragraphs (d)(1)(vi) and (f) to read as follows:

§ 96.17 Protection of existing fixed satellite service (FSS) earth stations in the 3600–3700 MHz Band and 3700–4200 MHz Band.

(a) FSS earth stations licensed to operate in the 3600–3700 MHz band listed at *www.fcc.gov/cbrs-protected-fss-sites* shall be protected from CBSD operation consistent with this section. The protections in this section shall only apply to registered FSS earth stations that are authorized to operate on a co-primary basis consistent with § 2.106 of this chapter.

(1) FSS earth stations in the 3650–3700 MHz band will be afforded protection consistent with this section only after the conditions set forth in § 96.21(c) are satisfied.

(2) *Co-channel.* The aggregate passband radiofrequency (RF) power spectral density at the output of a reference RF filter and antenna at the location of an FSS earth station operating in the 3600–3700 MHz band, produced by emissions from all co-channel CBSDs (within 150 km) operating in the Citizens Band Radio Service shall not exceed a median root mean square (RMS) value of −129 dBm/MHz. The reference antenna system requires SAS to calculate antenna gain using § 25.209(a)(1) and (4) of this chapter, and a reference RF filter between the feed-horn and low noise amplifier (LNA)/low noise block

downconverter (LNB), with 0.5 dB insertion loss in the passband.

(3) *Blocking.* The aggregate RF power at the output of a reference RF filter and antenna at the location of an FSS earth station operating in the 3600–3700 MHz band, produced by emissions from all CBSDs (within 40 km), shall not exceed a median RMS value of −60 dBm. The reference antenna system requires an SAS to calculate antenna gain using § 25.209(a)(1) and (4) of this chapter, and a reference RF filter between the feed-horn and LNA/LNB, with a filter mask of 0.6 dB/MHz attenuation to 30.5 dB at 50 MHz offset below the lower edge of the FSS earth station's authorized passband, and 0.25 dB/MHz attenuation to 55.5 dB at an offset greater than or equal to 150 MHz below the lower edge of the FSS earth station's authorized passband.

(b) Registered FSS earth stations in the 3700–4200 MHz band listed at *www.fcc.gov/cbrs-protected-fss-sites* shall be protected from CBSD operation in accordance with this section. Only licensed FSS earth stations used for satellite telemetry, tracking, and control (TT&C) operations will be protected under this section. Other licensed 3700–4200 MHz earth stations may be protected consistent with § 96.17(f).

(1) *Out-of-band emissions into FSS.* The aggregate passband RF power spectral density at the output of a reference RF filter and antenna at the location of a TT&C FSS earth station operating in the 3700–4200 MHz band, produced by emissions from all CBSDs (within 40 km) operating in the Citizens Band Radio Service shall not exceed a median RMS value of −129 dBm/MHz. The reference antenna system requires SAS to calculate antenna gain using § 25.209(a)(1) and (4) of this chapter, and a reference RF filter between the feed-horn and LNA/LNB, with 0.5 dB insertion loss in the passband.

(2) *Blocking.* The aggregate RF power at the output of a reference RF filter and antenna at the location of a TT&C FSS earth station operating in the 3700–4200 MHz band, produced by emissions from all CBSDs (within 40 km), shall not exceed a median RMS value of −60 dBm. The reference antenna system requires SAS to calculate antenna gain using § 25.209(a)(1) and (4) of this chapter, and a reference RF filter between the feed-horn and LNA/LNB, with a filter mask of 0.6 dB/MHz attenuation to 30.5 dB at 50 MHz offset below the lower edge of the FSS earth station's authorized passband, and 0.25 dB/MHz attenuation to 55.5 dB at an offset greater than or equal to150 MHz below the lower edge of the FSS earth station's authorized passband.

* * * * *

(d) * * *

(1) * * *

(vi) Whether the earth station is used for satellite telemetry, tracking, and control (for earth stations in the 3700–4200 MHz band).

* * * * *

(e) CBSDs may operate within areas that may cause interference to FSS earth stations, in excess of the levels described in § 96.17(a) and (b), provided that the licensee of the FSS earth station and the authorized user of the CBSD mutually agree on such operation and the terms of any such agreement are provided to an SAS Administrator that agrees to enforce them. The terms of any such agreement shall be communicated promptly to all other SAS Administrators.

(f) FSS earth station licensees in the 3600–3700 and 3700–4200 MHz bands may request additional protection from SAS Administrators to prevent harmful interference into their systems. SAS Administrators must establish a process to receive and address such requests, consistent with §§ 96.53(o) and 96.63 and shall make good faith efforts to address interference concerns, consistent with their other responsibilities under this part. In addressing such requests, SASs shall assume that 3700–4200 MHz earth stations are utilizing filters with the characteristics described in § 96.17(a)(3) or (b)(2) as appropriate for the 3600–3700 or 3700–4200 MHz band.

■ 11. Section 96.21 is amended by revising paragraph (c) to read as follows:

§ 96.21 Protection of existing operators in the 3650–3700 MHz Band.

* * * * *

(c) Grandfathered Wireless Broadband Licensees and Citizens Broadband Radio Service users must protect authorized grandfathered FSS earth stations in the 3650–3700 MHz band, consistent with the existing protection criteria in 47 CFR part 90, subpart Z, until the last Grandfathered Wireless Broadband Licensee's license expires within the protection area defined for a particular grandfathered FSS earth station. Thereafter, the protection criteria in § 96.17 applicable to FSS earth stations in the 3600–3700 MHz band shall apply.

■ 12. Section 96.25 is amended by revising paragraph (c) to read as follows:

§ 96.25 Priority access licenses.

* * * * *

(c) *PAL Protection Areas.* PAL channels shall be made available for assignment by the SAS for General Authorized Access use only in areas outside of PAL Protection Areas consistent with this section and § 96.41(d).

(1) A CBSD will be considered to be in use for purposes of calculating a PAL Protection Area once it is registered and authorized for use on a Priority Access basis by an SAS consistent with §§ 96.39, 96.53, and 96.57.

(i) Priority Access Licensees must inform the SAS if a previously activated CBSD is no longer in use.

(ii) Any CBSD that does not make contact with the SAS for seven days shall not be considered in use and will be excluded from the calculation of the PAL Protection Area until such time as contact with the SAS is re-established.

(2) The default protection contour will be determined by the SAS as a −96 dBm/10 MHz contour around each CBSD. The default protection contour will be calculated based on information included in the CBSD registration and shall be determined and enforced consistently across all SASs.

(i) The default protection contour is the outer limit of the PAL Protection Area for any CBSD but a Priority Access Licensee may choose to self-report protection contours smaller than the default protection contour to the SAS.

(ii) If the PAL Protection Areas for multiple CBSDs operated by the same Priority Access Licensees overlap, the SAS shall combine the PAL Protection Areas for such CBSDs into a single protection area.

(3) The PAL Protection Area may not extend beyond the boundaries of the Priority Access Licensee's Service Area.

■ 13. Section 96.29 is amended by revising paragraph (d) to read as follows:

§ 96.29 Competitive bidding procedures.

* * * * *

(d) Except in Rural Areas, when there is only one application for initial Priority Access Licenses in a License Area that is accepted for filing for a specific auction, no PAL will be assigned for that License Area, the auction with respect to that License Area will be canceled, and the spectrum will remain accessible solely for shared GAA use until the next filing window for competitive bidding of PALs. In Rural Areas, when there is only one application for initial Priority Access Licenses in a License Area, that applicant will be granted a PAL if otherwise qualified under the Commission's rules.

■ 14. Section 96.31 is revised to read as follows:

§ 96.31 Aggregation of priority access licenses.

(a) Priority Access Licensees may aggregate up to four PAL channels in any License Area at any given time.

(b) The criteria in § 20.22(b) of this chapter will apply in order to attribute partial ownership and other interests for the purpose of applying the aggregation limit in paragraph (a) of this section.

■ 15. Add § 96.32 to subpart C to read as follows:

§ 96.32 Priority access assignments of authorization, transfers of control, and leasing arrangements.

(a) Priority Access Licensees may transfer or assign their licenses and enter into de facto leasing arrangements in accordance with part 1 of this chapter.

(b) Priority Access Licensees may not partition or disaggregate their licenses or partially assign or transfer their licenses nor may they enter into de facto leasing arrangements for a portion of their licenses.

(c) Priority Access Licensees may enter into spectrum manager leasing arrangements with approved entities as prescribed in § 1.9046 of this chapter. Priority Access Licensees may only enter into leasing arrangements for areas that are within their Service Area and outside of their PAL Protection Areas.

■ 16. Section 96.35 is amended by revising paragraph (a) to read as follows:

§ 96.35 General authorized access use.

(a) General Authorized Access Users shall be permitted to use frequencies assigned to PALs when such frequencies are not in use, as determined by the SAS, consistent with § 96.25(c).

* * * * *

■ 17. Section 96.41 is revised to read as follows:

§ 96.41 General radio requirements.

The requirements in this section apply to CBSDs and their associated End User Devices, unless otherwise specified.

(a) *Digital modulation.* Systems operating in the Citizens Broadband Radio Service must use digital modulation techniques.

(b) *Power limits.* Unless otherwise specified in this section, the maximum effective isotropic radiated power (EIRP) and maximum Power Spectral Density (PSD) of any CBSD and End User Device must comply with the limits shown in the table in this paragraph (b):

Device	Maximum EIRP (dBm/10 megahertz)	Maximum PSD (dBm/MHz)
End User Device	23	n/a
Category A CBSD	30	20
Category B CBSD[1]	47	37

[1] Category B CBSDs will only be authorized for use after an ESC is approved and commercially deployed consistent with §§ 96.15 and 96.67.

(c) *Power management.* CBSDs and End User Devices shall limit their operating power to the minimum necessary for successful operations.

(1) CBSDs must support transmit power control capability and the capability to limit their maximum EIRP and the maximum EIRP of associated End User Devices in response to instructions from an SAS.

(2) End User Devices shall include transmit power control capability and the capability to limit their maximum EIRP in response to instructions from their associated CBSDs.

(d) *Received Signal Strength Limits.* (1) For both Priority Access and GAA users, CBSD transmissions must be managed such that the aggregate received signal strength for all locations within the PAL Protection Area of any co-channel PAL, shall not exceed an average (RMS) power level of −80 dBm in any direction when integrated over a 10 megahertz reference bandwidth, with the measurement antenna placed at a height of 1.5 meters above ground level, unless the affected PAL licensees agree to an alternative limit and communicate that to the SAS.

(2) These limits shall not apply for co-channel operations at the boundary between geographically adjacent PALs held by the same Priority Access Licensee.

(e) *3.5 GHz Emissions and Interference Limits*—(1) *General protection levels.* Except as otherwise specified in paragraph (e)(2) of this section, for channel and frequency assignments made by the SAS to CBSDs, the conducted power of any emission outside the fundamental emission (whether in or outside of the authorized band) shall not exceed −13 dBm/MHz within 0–10 megahertz above the upper SAS-assigned channel edge and within 0–10 megahertz below the lower SAS-assigned channel edge. At all frequencies greater than 10 megahertz above the upper SAS assigned channel edge and less than 10 MHz below the lower SAS assigned channel edge, the conducted power of any emission shall not exceed −25 dBm/MHz. The upper and lower SAS assigned channel edges are the upper and lower limits of any channel assigned to a CBSD by an SAS, or in the case of multiple contiguous channels, the upper and lower limits of the combined contiguous channels.

(2) *Additional protection levels.* Notwithstanding paragraph (d)(1) of this section, the conducted power of any emissions below 3530 MHz or above 3720 MHz shall not exceed −40dBm/MHz.

(3) *Measurement procedure.* (i) Compliance with this provision is based on the use of measurement instrumentation employing a resolution bandwidth of 1 megahertz or greater. However, in the 1 megahertz bands immediately outside and adjacent to the licensee's authorized frequency channel, a resolution bandwidth of no less than one percent of the fundamental emission bandwidth may be employed. A narrower resolution bandwidth is permitted in all cases to improve measurement accuracy provided the measured power is integrated over the full reference bandwidth (*i.e.,* 1 MHz or 1 percent of emission bandwidth, as specified). The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

(ii) When measuring unwanted emissions to demonstrate compliance with the limits, the CBSD and End User Device nominal carrier frequency/channel shall be adjusted as close to the licensee's authorized frequency block edges, both upper and lower, as the design permits.

(iii) Compliance with emission limits shall be demonstrated using either average (RMS)-detected or peak-detected power measurement techniques.

(4) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

(f) *Reception limits.* Priority Access Licensees must accept adjacent channel and in-band blocking interference (emissions from other authorized Priority Access or GAA CBSDs transmitting between 3550 and 3700 MHz) up to a power spectral density level not to exceed −40 dBm in any direction with greater than 99% probability when integrated over a 10 megahertz reference bandwidth, with the measurement antenna placed at a height of 1.5 meters above ground level, unless the affected Priority Access

Licensees agree to an alternative limit and communicates that to the SAS.

Note to paragraph (f): Citizens Broadband Radio Service users should be aware that there are Federal Government radar systems in the band and adjacent bands that could adversely affect their operations.

(g) *Power measurement.* The peak-to-average power ratio (PAPR) of any CBSD transmitter output power must not exceed 13 dB. PAPR measurements should be made using either an instrument with complementary cumulative distribution function (CCDF) capabilities or another Commission approved procedure. The measurement must be performed using a signal corresponding to the highest PAPR expected during periods of continuous transmission.

■ 18. Section 96.53 is amended by revising paragraph (i) and by adding paragraph (o) to read as follows:

§ 96.53 Spectrum access system purposes and functionality.

* * * * *

(i) To protect Priority Access Licensees from interference caused by other PALs and from General Authorized Access Users, including the calculation and enforcement of PAL Protection Areas, consistent with § 96.25.

* * * * *

(o) To receive reports of interference and requests for additional protection from Incumbent Access users and promptly address interference issues.

■ 19. Section 96.57 is amended by adding paragraph (e) to read as follows:

§ 96.57 Registration, authentication, and authorization of Citizens Broadband Radio Service Devices.

* * * * *

(e) An SAS must calculate and enforce PAL Protection Areas consistent with § 96.25 and such calculation and enforcement shall be consistent across all SASs.

■ 20. Add § 96.66 to subpart F to read as follows:

§ 96.66 Spectrum access system responsibilities related to priority access spectrum manager leases.

(a) An SAS Administrator that chooses to accept and support leasing notifications shall:

(1) Verify that the lessee is on the certification list, as established in § 1.9046 of this chapter.

(2) Establish a process for acquiring and storing the lease notification information and synchronizing this information, including information about the expiration, extension, or termination of leasing arrangements, with the Commission databases at least once a day;

(3) Verify that the lease will not result in the lessee holding more than the 40 megahertz of Priority Access spectrum in a given License Area;

(4) Verify that the area to be leased is within the Priority Access Licensee's Service Area and outside of the Priority Access Licensee's PAL Protection Area; and

(5) Provide confirmation to licensee and lessee whether the notification has been received and verified.

(b) During the period of the lease and within the geographic area of a lease, SASs shall treat any CBSD operated by the lessee the same as a similarly situated CBSDs operated by the lessor for frequency assignment and interference mitigation purposes.

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Part V

Environmental Protection Agency

40 CFR Parts 262, 263, 264 et al.
Hazardous Waste Management System; User Fees for the Electronic
Hazardous Waste Manifest System and Amendments to Manifest
Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 263, 264, 265, and 271

[EPA–HQ–OLEM–2016–0177; FRL–9940–99–OLEM]

RIN 2050–AG80

Hazardous Waste Management System; User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) proposes its user fee methodology applicable to electronic and paper manifests submitted to the national electronic manifest system (or e-Manifest system) that is being established by EPA under the Hazardous Waste Electronic Manifest Establishment Act. After the implementation date for the e-Manifest system, certain users of the hazardous waste manifest would be required to pay a prescribed fee for each electronic and paper manifest they use and submit to the system in order for EPA to recover its costs of developing and operating the national e-Manifest system. The final rule that EPA develops in response to public comments on this action's proposed fee methodology will include the final fee methodology. In addition, EPA will include the initial fee schedule and the implementation date for the e-Manifest system in the preamble to the final rule.

This action also proposes several amendments to the regulations governing the use of electronic hazardous waste manifests and the completion of manifests. These amendments propose: to change EPA's longstanding regulations regarding transporter changes to shipment routing information on the manifest during transportation, to specify a process by which receiving facilities may submit manifest data corrections to the e-Manifest system, and to modify a provision of the current electronic manifest use requirements that precludes the use of mixed electronic and paper manifests by those users desiring to make use of electronic manifests in settings where not all users are able to participate electronically. This action is expected to result in net cost savings amounting to $34 million per year when discounted at 7% and annualized over 6 years. Further information on the economic effects of this action can be found in section VII of this preamble.

DATES: Comments must be received on or before September 26, 2016. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before August 25, 2016.

ADDRESSES: For this rule, EPA is requesting comments be submitted electronically on a comment platform being piloted at *https://epa-notice.usa.gov.* Alternatively, commenters may choose to submit comments by postal mail or electronically through *Regulations.gov.* For comments submitted via postal mail or *Regulations.gov,* EPA is further requesting comments be submitted using comment headings. Please see **SUPPLEMENTARY INFORMATION**, section I.E. (Submitting Comments) for more information on the pilot, use of comment headings, and other general instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: For further information regarding specific aspects of this document, contact Richard LaShier, Office of Resource Conservation and Recovery, (703) 308–8796, *lashier.rich@epa.gov,* or Bryan Groce, Office of Resource Conservation and Recovery, (703) 308–8750, *groce.bryan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The hazardous waste manifest affects approximately 80,000 federally regulated entities and an equal or greater number of entities handling state-only regulated wastes in at least 45 industries. These industries are involved in shipping off-site, transporting, and receiving several million tons[1] annually of wastes that are hazardous under the Resource Conservation and Recovery Act (RCRA) or state-only regulated wastes that are subject to the tracking of their movements with the RCRA hazardous waste manifest. EPA estimates that these entities currently use between 3 and 5 million hazardous waste manifests (EPA Form 8700–22) and continuation sheets (EPA Form 8700–22A) to track RCRA hazardous and state-only[2] regulated wastes from generation sites to receiving facilities for their management. The affected entities include hazardous waste generators, hazardous waste transporters, and owners and operators of treatment, storage, and disposal facilities (TSDFs), as well as the corresponding entities that handle state-only regulated wastes subject to tracking with the RCRA manifest.

However, as explained in section III.B.3 of this preamble, this proposed rule would primarily affect the several hundred commercial TSDFs that receive hazardous and state-only regulated wastes from off-site for management at their permitted or interim status facilities. Under this proposed rule, these commercial TSDFs would be the focal point for the payment and collection of the user fees under the proposed rule. EPA has tentatively concluded that payment of this proposal's user fees by the several hundred commercial TSDFs is the most efficient and expedient means for implementing a user fee requirement for the national e-Manifest system. Potentially affected categories and entities include, but are not necessarily limited to:

NAICS Description	NAICS Code	Examples of potentially affected entities
Transportation and Warehousing	48–49	Transportation of hazardous waste.
Waste Management and Remediation Services	562	Facilities that manage hazardous waste.

This table provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in title 40 of the Code of Federal Regulations (CFR) parts 263, 264, and 265. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the **FOR FURTHER INFORMATION CONTACT** section.

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[1] The 2011 RCRA Biennial Report discloses that RCRA large quantity generators (LQGs) alone shipped about 6.2 million tons of waste in 2010. Small quantity generators and state regulated wastes subject to manifesting would likely produce several million more tons of wastes each year to be tracked with manifests.

[2] EPA uses the term "state-only regulated wastes" to refer to all types of wastes that are required under state law to be tracked with the RCRA hazardous waste manifest, though they exceed the coverage (*i.e.,* beyond the scope) of the listed and characteristic wastes that are regulated federally as RCRA hazardous wastes.

B. What action is the agency taking?

The EPA is requesting comment on its proposed fee formula and methodology for implementing a user fee to recover costs incurred in developing, operating, maintaining, and upgrading a national e-Manifest system, including any costs incurred in collecting and processing data from any paper manifest submitted to the e-Manifest system after the date on which the system begins to operate. The EPA is also requesting comment on its proposed changes to modify its current regulations regarding transporter changes to shipment routing information on the manifest during transportation.

C. What is the agency's authority for taking this action?

The authority to propose this rule is found in sections 1002, 2002(a), 3001–3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901, 6906 *et. seq.*, 6912, 6921–6925, 6937, and 6938, and further amended by the Hazardous Waste Electronic Manifest Establishment Act, Public Law 112–195, section 6939g.

D. What is the scope of this proposed rule?

This proposed rule addresses several key policy issues related to the implementation of user fees to recover and fund the costs of developing and operating a national e-Manifest system, including:

1. Which users of manifests and manifest data will be charged user fees?
2. What will be the transactional basis for assessing user fee obligations?
3. How will users be expected to pay their owed fees?
4. What model or formula will EPA rely upon for the determination of users' fees?
5. How will the rule address fee trajectory and fee schedule revisions?
6. Which, if any, manifest transactions warrant a fee premium?
7. What sanctions are being proposed to induce prompt payment of user fees?
8. How will EPA conduct the financial tracking and reporting functions essential to the proper calculation and determination of fees and to the oversight of the e-Manifest fee program?

In addition, the proposed rule addresses several regulatory amendments related to the use of electronic manifests and the completion of manifests. These additional regulatory proposals are not user fee related, and address these issues: (1) A proposal that would allow certain changes to the routing of a hazardous waste shipment indicated on the manifest, while the shipment is in transportation; (2) a proposal that would allow hazardous waste receiving facilities to make corrections electronically to previously submitted manifest data; and (3) a proposal that would allow a manifest user, in certain instances, to execute and use a hazardous waste manifest that combines the use of a paper manifest with the use of an electronic manifest.

E. Submitting Comments

1. Notice and Comment Pilot

EPA partnered with the General Services Administration's 18F Team to pilot a platform for submitting comments on this rule. The new platform is designed to assist readers in understanding the rule and proposed regulatory changes, as well as to assist EPA in collecting structured comments. EPA is requesting commenters to use the new comment platform, which can be found at *https://epa-notice.usa.gov.* The pilot comment platform is a federal application supporting the EPA in its rulemaking process. Comments filed through the pilot comment platform are filed to the official docket for this rule. EPA will process comments submitted through the pilot using the same rules and restrictions (*https://www.epa.gov/dockets/commenting-epa-dockets#rules*) that apply to comments received from any other method. If a comment meets the aforementioned requirements, then the comment will be publically posted to *Regulations.gov.* Commenters, that use the pilot to submit comments, do not need to submit duplicative comments through another method (*e.g., Regulations.gov* or postal mail).

The use of the pilot comment platform is optional; Commenters may still choose to submit comments by postal mail or electronically through *Regulations.gov.*

2. Comment Headings

For comments not submitted through the pilot comment platform, and instead submitted via postal mail or *Regulations.gov*, EPA is requesting commenters to identify their comments on specific issues by using the appropriate number and comment heading listed below. If your comment covers multiple issues, please use all the heading numbers and names that relate to that comment. As an example of this optional method, where one individual comment relates to issue #1 and a second individual comment pertains to issues #2 and #3, a set of comments would be submitted as follows, where the number and comment headings are underlined:

1. Data Access Services
Your comment here. . .
2. Billable Event; 3. Fee Methodology
Your comment here. . .

The list below also contains the proposed rule section numbers with which you can find more information on each issue. Similarly, throughout the proposed rule, parentheticals in italics have been added to identify the heading number and name to be used when commenting on the specific issues. The description following each comment heading summarizes the individual issues. More detailed descriptions of the issues and issue-specific questions can be found in the indicated sections of the rule.

Although submission of your comments using the aforementioned format is not required at this time, it is encouraged so as to not only assist the Agency in efficiently and effectively considering and responding to comments received, but also provide commenters more effective means of informing environmental decision making.

Comment Headings

1. Data Access Services—EPA requests comment on the proposal for TSDF user fees to cover cost of public data access services. (See Section III.A.2)

2. Billable Event—EPA requests comment on the proposal to use the final manifest submission by the TSDFs as the billable event for purposes of assessing user fees. (Section III.B.3)

3. Fee Methodology—EPA requests comment on the proposed fee formula, alternative fee formulas, transition period for application of different formulas, amortization period for costs, possible omitted costs, incentivizing material management behavior through the fee methodology, and other fee formula related issues. (Section III.C.6)

4. Disallow Postal Mailed Manifests—EPA requests comment on another approach under which TSDFs would be restricted to submitting their paper manifest data to EPA by electronic means only, that is, by uploading image files to EPA, or by uploading a data file (*e.g.,* XML file) of manifest data accompanied by an image file. (Section III.C.6)

5. *Inflation Adjuster*—EPA requests comment on the proposal for an inflation adjustment factor predicated on the use of the CPI–U, for all items, not seasonally adjusted, as a sufficiently representative inflationary index and a means to adjust e-Manifest user fees for inflation between the first year and second year of the two-year fee schedules. (Section III.D.3.a and Section III.D.4)

6. *Revenue Recovery Adjuster*—EPA is requesting comment on the inclusion of a revenue recovery adjuster in the proposed fee trajectory methodology and on the emphasis on inflation, manifest usage estimates, and uncollectable manifests as the key sources of revenue instability that the adjusters should address in the trajectory methodology. (Section III.D.3.b and Section III.D.4)

7. *Two-Year Fee Schedule Revision Cycle*—EPA is requesting comment on the proposed two-year fee schedule revision cycle. (Section III.D.4)

8. *90-Day Lead Time for Fee Schedule Changes*—EPA is requesting comment on the proposal to have EPA publish the fee schedule changes to the e-Manifest Web site 90 days prior to the effective date of fee schedule changes. (Section III.D.4)

9. *Stray and Extraneous Documents*—EPA is requesting comment on proposed fee premiums for processing stray and extraneous documents. (Section III.E.2.a.v)

10. *Paper Manifest Corrections*—EPA is requesting comment on proposed fee premiums for processing a correction to a paper manifest. (Section III.E.2.a.vi)

11. *Incentivize Electronic Manifest Use*—EPA is requesting comment on a proposal to rely on the fee formula itself to incentivize electronic manifest use, and not to include a distinct monetary penalty to discourage paper manifest use. (Section III.E.2.a.vii)

12. *Payment Options*—EPA requests comment on the proposed monthly invoicing approach and the alternative options. (Section III.F.6)

13. *Fee Dispute Resolution*—EPA requests comment on the proposed informal fee dispute resolution and appeals process. (Section III.G)

14. *Financial Sanctions*—EPA requests comment on the proposal to incorporate the financial interest and penalty charges set out in the Federal claims collection statutes as the first and second tier of e-Manifest fee payment sanctions. (Section III.H.2.a)

15. *Delinquent Payors List*—EPA requests comment on the inclusion of a Delinquent Payors List among the sanctions that would be available to the Agency in the event of serious, continued delinquency of e-Manifest user fee payments. (Section III.H.2.b)

16. *Denial of Service Sanction*—EPA requests comment on the appropriateness and means by which EPA could deny access to e-Manifest services to those users who are exceedingly delinquent in their manifest fee payments. (Section III.H.2.d)

17. *Suspension of Facility Authorization*—EPA requests comment on possible authorization sanctions on facilities that are delinquent on e-Manifest payments. (Section III.H.2.d)

18. *Changing Transporters en Route*—EPA requests comment on the proposal to modify its current regulations regarding transporter changes to shipment routing on the manifest. (Section IV.B)

19. *Submission of Manifest Data Corrections*—EPA requests comments on the proposed approach for the submission of manifest data corrections to the system, and the fees to be assessed for such corrections. (Section V.C)

20. *Hybrid Approach*—EPA requests comment on the proposal for mixed paper and electronic manifest transactions. (Section VI.B)

21. *RIA*—In total, discounting at 7% over six years, the annualized baseline costs of the paper manifest system are estimated to be $183 million. EPA would appreciate any information to improve the accuracy of this estimate. (Section VII.C)

22. *ICR*—EPA requests comments on the Agency's need for information under ICR 0801.21, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA. NOTE: You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *oira_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than 30 days after publication in the **Federal Register**. (Section IX.B)

23. *OTHER*—any comments not falling under one of the preceding categories should be identified using 'OTHER' as the comment header.

3. General Information for Submitting Comments

Comments submitted through *Regulations.gov* (at *http://www.regulations.gov) or submitted by postal mail* should be identified by Docket ID No. EPA–HQ–OLEM–2016–0177. For comments submitted through *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Please note the Agency will not accept comments submitted via email or fax.

II. Background

A. Enactment of Electronic Manifest Legislation

In 2012, Congress enacted the Hazardous Waste Electronic Manifest Establishment Act, Public Law 112–195 (hereafter, the e-Manifest Act or Act). The goal of this legislation was to provide the users of the hazardous waste manifest with a much more efficient and modern option to the 6-copy paper manifest forms that have been used for more than 30 years to track hazardous waste shipments from "cradle-to-grave." The e-Manifest Act directed EPA to establish a national electronic manifest system that would enable users, at their option, to obtain and submit electronic manifests to track waste shipments involving either RCRA hazardous wastes or certain state-only regulated wastes subject to manifesting requirements under federal or state law. It was the intent of the Act that a data repository would be established within the e-Manifest system, and that this national data repository would collect and retain waste shipment data from the electronic manifests obtained from the system, as well as from processing the data from any paper manifests that continued in use after the deployment of the e-Manifest system.

Of particular significance to this proposed rule are the funding provisions of the e-Manifest Act. While section 2(i) of the Act authorized Congress to appropriate funds to cover start-up activities and costs, Congress intended that the e-Manifest system would ultimately be self-sustaining once deployed. Under section 2(c) of the Act, EPA was authorized to impose and collect reasonable service fees (user fees) necessary to pay the costs of developing, operating, maintaining, and upgrading the e-Manifest system, including any costs incurred in collecting and processing paper manifests submitted to the system. Section 2(d) of the Act further authorized the establishment of a special System Fund in the U.S. Treasury for the deposit of collected service fees. By the terms of sections 2(d)(2) and 2(c)(4) of the Act, funds deposited in the System Fund could be transferred from Treasury to EPA at the Administrator's request and spent for system related costs to the extent of and in the amount provided in advance in appropriations Acts. The fees collected and deposited in the System Fund would be used to fund the system's operating costs and other system related costs, as well as to offset any appropriated funds authorized under section 2(i) of the Act to seed the start-up activities and system development costs.

In particular, section 2(c) of the Act confers broad discretion to EPA to determine the user fees to be imposed on users of the system. This provision states that EPA "may impose on users such reasonable service fees as the Administrator *determines to be necessary* to pay costs in developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing data from any paper manifest submitted to the system after the date on which the system enters operation" (emphasis supplied).

On the issue of timing of fee collections, section 2(c)(2)(A) of the Act provides EPA discretion to collect fees from users either in advance of services being provided, or, as reimbursement for the provision of system-related services by EPA.

The user fee provisions of the Act further speak to the matter of fee adjustments. Under section 2(c)(3)(B) of the Act, EPA shall, in consultation with the Board,[3] increase or decrease the amounts of the fees so that the amounts collected and aggregated in the System Fund are sufficient (and not more than reasonably necessary) to cover current and projected system costs, including necessary upgrades. Moreover, the fees should be maintained at levels that minimize, to the maximum extent practicable, the accumulation of unused amounts[4] in the Fund. Where the timing of fee adjustments is concerned, section 2(c)(3)(B)(iii) of the Act specifies that the fee schedule shall be adjusted initially when start-up costs have been recovered, and periodically thereafter, whenever an annual audit report on the system's finances discloses a significant disparity between fees collected in a fiscal year, and expenditures made for system related services during that fiscal year.

B. Issuance of First e-Manifest Regulation in February 2014

In response to the e-Manifest Act's mandate[5] to issue regulations authorizing electronic manifests within one year of enactment of the statute, EPA issued its first final regulation pertaining to e-Manifest on February 7, 2014 (79 FR 7518–7563). Because of the mandate to issue this final regulation within one year of the statute, EPA refers to this regulation as the e-Manifest One Year Rule.

The purposes of the One Year Rule were to codify key provisions of the Act touching upon the scope of users and manifests eligible to participate in e-Manifest, to codify the provisions of the Act requiring consistent implementation of electronic manifests in all the states, to finalize EPA's decision to establish a national electronic hazardous waste manifest system, and to announce policy decisions related to using and implementing electronic manifests. Fundamentally, the One Year Rule provides clarity with respect to the validity of electronic manifests. The Rule explains that the electronic manifest format obtained from and supported by the national e-Manifest system shall be the one electronic manifest format authorized for national use, that electronic manifests obtained from and submitted to the e-Manifest system in accordance with the One Year Rule are the legal equivalent to paper manifests in all relevant respects, and that all authorized states must respect the validity of the national electronic manifest and revise their authorized programs to allow the use of electronic manifests. The One Year Rule also clarified that manifest data could not be subject to confidential business information claims or protections, and explained how e-Manifest and the recommended electronic signature methods discussed in the Rule's preamble would comply with EPA's electronic reporting policies as articulated in the Agency's Cross Media Electronic Reporting Rule or CROMERR (70 FR 59848, October 13, 2005). Thus, the One Year Rule announced the legal and policy framework governing the authorization and use of electronic hazardous waste manifests within EPA's national e-Manifest system.

While the One Year Rule addressed fundamental scope and policy issues related to the use of electronic manifests, it did not speak to user fees to any significant extent. When developing the One Year Rule, EPA realized it would not be in a position to determine in that rule's timeframe all the various components of the e-Manifest information technology system and their costs, and thus would not be able to determine the program's initial schedule of user fees as a part of the One Year Rule. Moreover, the issues raised and determined in the One Year Rule had been noticed for public comment in previous proposals and regulatory notices, while the content of the Fee Rule had not yet been scoped out and noticed for public comment. Therefore, EPA concluded that the development of an e-Manifest user fee methodology and fee schedules would be undertaken as a separate rulemaking. This proposed rule is thus the means by which EPA will solicit comment from the public on our proposed Fee Rule methodology, suggest the likely range of fees that will result, identify our economic models and assumptions, and propose for comment the related scope and other policy issues related to determining and collecting e-Manifest user fees.

C. Federal User Fee Design Guidance

The development of this action was influenced greatly by two federal guidance documents that apply to user fee design and implementation by executive department agencies. They are: (1) OMB Circular A–25, a Memorandum for Heads of Executive Departments and Establishments addressing the subject of "User Charges," and (2) the United States Government Accountability Office (GAO) Report No. GAO–08–386SP, *Federal User Fees, A Design Guide,* (May 2008).

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[3] "Board" refers to the e-Manifest System Advisory Board, a 9-person Federal Advisory Committee of stakeholders that EPA must establish pursuant to the Federal Advisory Committee Act to advise EPA on the effectiveness of the system, to consult with EPA on service fee adjustments, and to make recommendations relating to the system.

[4] The Act provides an exception whereby a revenue surplus not exceeding $2 million may be accumulated in the Fund over the initial 3-year period of system operations.

[5] This mandate appears in section 2(g)(1)(A) of the Act, which directs EPA to promulgate final regulations to carry out the Act within one year of enactment of the Act, after consultation with the Secretary of Transportation. EPA consults regularly with the Department of Transportation (DOT) on its manifest requirements and other transportation related actions, since the manifest is a shipping paper that is grounded on the joint authority of RCRA § 3002(a)(5) and DOT's hazardous materials regulations or HMRs.

1. OMB Circular A–25

The purpose of Circular A–25 is to establish federal policy regarding user charges or fees assessed for government services under the Independent Offices Appropriations Act or IOAA, 31 U.S.C. 9701, and 31 U.S.C. 1111. It explains for executive agencies the scope and type of activities subject to user charges and the basis on which user charges should be set. It also provides guidance for agencies on the implementation of user charges or fees and on the disposition of fee collections. The guidance presented in Circular A–25 applies to user fees implemented generally under the IOAA, as well as to implementations of user fees that are governed specifically by a statute, such as the e-Manifest Act, to the extent that Circular A–25 is not inconsistent with the e-Manifest Act.

The Circular A–25 guidance that is most relevant to this action includes the following points:

- User charges should be assessed against identifiable recipients that receive special benefits derived from federal activities beyond those received by the general public.
- When the provision of special benefits to identifiable recipients also results in an incidental benefit to the general public, an agency need not allocate any costs to the public and should seek to recover the cost of providing the services from the identifiable recipients of special benefits.
- User charges should be set so as to recover the "full cost" to the Federal Government of providing the good or service, where "full cost" includes all direct and indirect costs to any part of the government of providing the good or service.
- The relevant direct and indirect costs to be recovered by user charges include, but are not limited to, an appropriate share of:
  - ○ Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement costs,
  - ○ Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, travel, and rents or imputed rents on land, buildings, and equipment,
  - ○ Management and supervisory costs, and
  - ○ Costs of enforcement, collection, research, establishment of standards and regulations, including environmental impact statements.
- It is general policy that user charges will be instituted through the promulgation of regulations.
- In their implementation of user charges, agencies should:
  - ○ Review all sources of statutory authority, in addition to the IOAA, that may authorize the implementation of user charges;[6]
  - ○ Make every effort to keep the costs of collection to a minimum;
  - ○ Initiate and adopt user charge schedules consistent with the policies of the Circular;
  - ○ Review the user charges for agency programs biennially, to provide assurance that existing charges are adjusted to reflect unanticipated changes in costs or market values;
  - ○ Ensure that internal control systems and appropriate audit standards are applied to collection; and
  - ○ Maintain readily accessible records of the information used to establish charges, the specific methods used to determine them, and the collections from each user charge imposed.[7]

2. The GAO Federal User Fees Design Guide

The May 2008 GAO User Fees Design Guide presents a very useful analytical framework for addressing the equity, efficiency, and cost allocation issues posed by setting user fees. The User Fees Design Guide identifies and discusses at length four key design questions, and sub-questions for each, that agencies should address when establishing user fees for a good or service provided by the government:

- How are user fees *set*? What total program costs are considered and allocated among beneficiaries? Does the beneficiary pay principle apply, or are there special considerations, such as particular beneficiaries' ability-to-pay, that affect the setting of fees? If exemptions are established for one class of beneficiaries, how are their costs recovered?
- How are user fees *collected*? How is the proper balance struck between ensuring compliance with fees and minimizing administrative costs?
- How are user fees *used* by the government? What is the balance between Congressional oversight/appropriations controls and agency flexibility? Are fees dedicated only to the related agency program, or, are they deposited in the general fund of the Treasury?
- How are user fees *reviewed* and *updated*? Are the fee rates aligned with actual program costs and activities, and how are they adjusted for changes in program costs? What opportunities are there for stakeholder input in fee reviews and how does this affect acceptance?

In addressing the key design questions, the GAO Guide explains that the design of user fees typically involves a balancing of several outcomes, including:

- The *economic efficiency* of user fees, including a consideration of the alignment of users' costs with the social costs of providing the services, and any incentives for reducing costs;
- The *equity of the fee system,* which may involve trade-offs between the principle that all beneficiaries of services should "pay their fair share," and considerations of ability-to-pay;
- The *adequacy of resulting revenues,* insofar as revenues being sufficient to cover all known program related costs (direct and indirect) as well as to keep pace with inflation and other increases to program costs, and
- The *administrative burden* of the fees, which requires a consideration or balancing of the compliance burden imposed by fee administration and collection, as well as the costs of collection and enforcement of fees.

Circular A–25 and the GAO User Fees Design Guide contain a wealth of information that is relevant to the administrative processes of setting, revising, collecting, and reporting fees. As EPA discusses its rationale for setting e-Manifest fees in the remainder of this preamble, the Agency will rely heavily on the policies and principles identified in these two federal guidance documents.

III. Detailed Discussion of the Proposed Rule

A. Which users of manifests and manifest data will be charged user fees?

1. Background

Under Circular A–25 policy, user fees should be designed to recover all system related costs that arise from the development and operation of the e-Manifest system. EPA recognizes that there are two distinct classes of entities that might be considered as users with respect to the e-Manifest system: (1) The class of users who represent the waste handlers that must actually use the waste manifest in connection with tracking wastes that they generate, transport, or receive as RCRA designated facilities; and (2) the class of data consumers who do not use the manifest for regulatory compliance, but who might wish to access e-Manifest to obtain data on others' waste movements or activities. The latter class could include members of the general public, law firms, trade associations, and research organizations. This class of data users also includes state or tribal officials that may not have access to an internal tracking system for manifest data. While EPA believes that the preponderance of system related costs would arise in connection with the provision of manifest services to those using the manifest for waste shipment tracking or regulatory compliance purposes, there would likely be additional costs associated with providing members of the public with access to manifest data. For example, EPA might develop a public facing module within the e-Manifest system for the very purpose of distributing manifest data to the general public, or, EPA might expend resources distributing such data to the public through another data distribution service, such as the Envirofacts data warehouse or similar service. How should these costs be recovered under a user fee system?

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[6] The e-Manifest Act clearly authorizes user charges, and the Act's provisions on user fees must be accommodated with Circular A–25 policies.

[7] Circular A–25, Section 8(g), provides that this information should be provided on request to OMB in accordance with OMB Circular No. A–11.

Of relevance to this issue is the statutory definition of "user" included in the e-Manifest Act. In section 2(a)(5), the Act defines "user" to mean a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

- Is required to use a manifest to comply with any Federal or State requirement to track the shipment, transportation, and receipt of hazardous waste or other material that is shipped from the site of generation to an off-site facility for treatment, storage, disposal, or recycling, and
- Elects to use the system to complete and transmit an electronic manifest format, or submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy) in accordance with such regulations as the Administrator may promulgate to require such a submission.

EPA incorporated this statutory definition of "user" within the terms of the February 2014 One Year Rule, which included in 40 CFR 260.10, a definition of "user of the electronic manifest system" that is consistent with the statutory definition. Both the statutory and regulatory definitions focus on the members of the regulated community that are required to use the manifest to comply with a federal or state requirement to track the generation, transportation, and receipt of waste shipments.

2. What is EPA proposing on this issue?

As a threshold issue, EPA is proposing to limit the imposition of user fees to only the members of the regulated community that must use the manifest as a matter of regulatory compliance for tracking the generation, transportation, or receipt of hazardous waste or other regulated waste shipments (*e.g.,* state-only regulated wastes or special wastes) that are subject to a manifest requirement under federal or state law. EPA is not proposing to charge members of the general public, nor officials from federal, state, or tribal agencies, any service fees for their accessing manifest data from the e-Manifest system.[8]

This proposal is based on the Agency's belief that by defining the term "user" with reference only to the members of the regulated community who must use the manifest for regulatory compliance with waste shipment tracking requirements, Congress similarly intended that the imposition of user fees would be limited to the class of "users" as defined under the Act.

EPA also believes that this proposal is supported by OMB Circular A–25 policy, as well as by principles of the GAO User Fees Design Guide. While the establishment of e-Manifest will provide significant benefits to waste handlers, the EPA believes the general public should also benefit from e-Manifest. These benefits, however, will likely be incidental to those afforded to the regulated waste handlers. Thus, under section 5.A.3 of Circular A–25, it would not be appropriate to allocate system costs to the public by charging members of the public a user fee to access e-Manifest data.

Therefore, EPA is proposing to limit the imposition of user fees to the class of hazardous or other regulated waste handlers who must use the manifest for tracking waste shipments. User fees will not be assessed against members of the general public for their access to manifest data. As a result, the costs of providing the public with access to manifest data will be recovered through user fees applicable to the members of the regulated community who are defined as "users" under the e-Manifest Act. There will be a small, incremental increase in the resulting user fees to cover the cost of the incidental provision of data access services. EPA requests comment on this proposal *(If submitting comments on this issue, please use comment header: 1. Data Access Services).*

B. What will be the transactional basis for assessing user fee obligations?

1. Background

Section 2(c)(1) of the e-Manifest Act provides EPA authority to "impose on users such reasonable service fees as the Administrator determines to be necessary to pay the costs incurred in developing, operating, maintaining, and upgrading the system." This authority to impose such fees extends to electronic manifest activities and to the processing of data from paper manifests that continue in use after e-Manifest is implemented. Moreover, under section 2(c)(2) of the Act, EPA may collect fees from users in advance of, or as reimbursement for, the provision of system-related manifest services. Apart from this direction, however, the Act provides EPA with broad discretion insofar as determining the amounts of applicable fees, and determining what system activities should give rise to a fee.

EPA believes that an important scoping consideration for e-Manifest user fees is determining what transactions should be the basis for manifest fees. This issue involves both the matter of what manifest-related event should be the trigger or "billable event" for assessing a user fee, and it also involves where in the manifest business process this event occurs, and which user entity should thus be responsible for paying the fee. There is also the issue of whether the fee should be assessed on a per manifest basis, necessitating numerous fee payments of relatively small amounts, or, whether there should be a larger, aggregate payment paid perhaps in advance, based on recent manifest usage as perhaps the best indicator of likely current usage.

In determining this issue for this proposed rule, EPA will follow the principles of the 2008 GAO User Fee Design Guide. The Agency will attempt to balance: (1) The economic efficiency of the fees so that the fees align with the costs of providing services; (2) the equity of the resulting fee system by considering "beneficiaries pay their fair share" and "ability-to-pay" principles; and (3) assuring adequacy of resulting revenues, while minimizing the administrative burden of implementing the fee.

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[8] EPA notes that public requests for information that are submitted to EPA pursuant to the Freedom of Information Act or FOIA may give rise to distinct FOIA imposed fees under FOIA requirements.

2. What options did EPA consider?

EPA considered several options for determining the transactional basis for e-Manifest fees. Obviously, there appears to be a natural linkage between the system costs that accrue and the number of manifest transactions engaged in by the users. Thus, all options involve a consideration of manifest usage as a determining factor in assessing user fees. The options here differ in terms of what event in the manifest business process triggers the fee, and which entity is thus responsible for that fee.

While the consideration of the transactional basis for fee assessments might also consider the question of whether fees should be collected as a lump sum payment vs. collected from multiple manifest transactions, that issue is addressed later in this preamble in section III.F, dealing with how fee payments will be made and collected. The remainder of this section addresses the appropriate event in the manifest business process for assessing fees and which of the regulated community users of the manifest should therefore be responsible for e-Manifest fee payments.

As a first option, EPA considered imposing a per manifest fee on the hazardous waste generators at the time they initiate their manifests in the system. The system would track manifest usage by each generator, and payments could be collected either at the time of provision of manifests to the generators, or, these generators could be billed for their usage on a monthly basis. This option would ensure that all manifest users, including the many generators that initiate the manifest and that are responsible for much of the manifest content, pay their fair share for the services they would use. However, this option would also entail establishing 100,000 or more payment accounts for the many hazardous waste and state-only regulated waste generators and engaging in invoicing and collection activities with all those accounts. Thus, the "all pay their fair share" principle must be balanced against the administrative efficiency of assessing fees from the many generators in the system.

The alternative option considered would also impose a per-manifest fee, but the billable event under this option would be the submission of the final manifest by the TSDF to the system. While this option necessarily entails providing manifest services to waste handlers prior to the final copy submission by the TSDF, it involves the significant advantage that there are only a few hundred commercial or captive TSDFs that receive waste from off-site and that would be submitting final manifests to the system. Thus, there would be far fewer parties responsible for paying fees under this approach. Many more manifests would be concentrated among these several hundred TSDFs, so the fee collections would be far more efficient than pursuing 100,000 or more generators for payments of smaller amounts. Also, with the TSDFs primarily responsible for payment of user fees to EPA, these facilities would be able to pass their fee costs through to their generator customers as part of their waste management service charges, if so desired. When this option was discussed with the waste industry members, they appeared to accept this option as the preferred approach for dealing with fees and their customer relations. Industry members were particularly supportive of this option if it were implemented with a monthly billing cycle, under which they would be billed each month for the prior month's actual usage, rather than being assessed fees for estimated levels of usage.

3. What is EPA proposing on this issue?

EPA is proposing the second option, under which the submission of the final manifest to the e-Manifest system by the TSDF would be the billable event for calculating per manifest fees. This proposal is driven by the far greater administrative efficiency of dealing with a much more manageable base of several hundred TSDFs with payment accounts and collection activity in the system, rather than having to establish and deal with 100,000 or more generator accounts and the attendant administrative costs of billing and collecting from so many more entities. This option could pose some additional revenue stability risk, if the EPA elects to collect fees monthly as accounts receivable after providing facilities with manifest services. Under this approach, EPA might provide TSDFs with a month of manifest services at significant cost prior to billing the TSDFs on a monthly cycle for their actual manifest usage. Thus, credible sanctions to induce prompt fee payments would appear to be a necessary feature to support this option. Such fee sanctions are discussed in section III.G of this preamble.

EPA requests comments on the merits of treating the final manifest submission by TSDFs as the transactional basis or billable event for purposes of assessing user fees in e-Manifest *(If submitting comments on this issue, please use comment header: 2. Billable Event).* Do commenters agree with EPA's assessment that the more manageable number of commercial and captive TSDFs submitting manifests to the system, relative to the number of generators that might initiate manifests, is an appropriate analysis for the adoption of the policy that the final TSDF submission should be the billable transaction in e-Manifest? Is there another option available that is equally or more effective than this preferred option, insofar as providing a rational means for charging users for their manifest activity in the system, while minimizing the administrative costs of collection?

In the February 2014 final regulation on electronic manifests (*i.e.,* the One Year Rule), EPA codified language in parts 262, 263, and 264/265 that would authorize the Agency to impose reasonable user fees on hazardous waste generators, transporters, and receiving facilities or TSDFs. EPA included this broad authority to impose electronic manifest user fees on all classes of users, as this was consistent with the broad grant of authority to impose such fees in the e-Manifest Act. In this proposal, EPA is clarifying that its preferred option would be to limit electronic manifest user fee payments and collections to the receiving facilities, thereby excluding generators and transporters from fee payments and collections. If the final rule adopts this approach, and there are no other issues presented that suggest a need for a broader fee collection system, EPA intends to delete the current parts 262 and 263 provisions that now extend fee collection authority to generators and transporters.

C. What model or formula will EPA use to calculate fees?

1. Background

In this section, EPA is presenting for comment its proposed methodology for determining the fees that TSDFs will be assessed based on their usage of manifests in the system. As discussed previously in this proposed rule, EPA believes that assigning fees to TSDFs based on a per-manifest charge is the most equitable and efficient means for allocating system costs to users. By relying on a per-manifest charge, users will bear the costs of developing and supporting the system in proportion to their usage of it. The TSDF users would be expected to bear the burden and realize the benefits of the system in proportion to their usage, and because TSDFs can pass their fee expenses through to their generator customers if desired, the system costs can be efficiently shared across the manifest user community.

The proposed fee model or methodology must, of course, fully recover EPA's costs to design, build, operate, maintain, upgrade, and manage the e-Manifest system and program. This will ensure that the Agency can manage the e-Manifest system and program without funds from other appropriations, and avoid the possibility of Anti-Deficiency Act violations. Therefore, the development of a proposed methodology is all about determining first, what are all the activities related to developing and operating e-Manifest, and what are the costs of these activities? Second, once the total costs of developing and supporting e-Manifest have been documented, we then must determine how these costs will be allocated over all the manifests that will be submitted to the system. While at the most basic level, one might determine a per manifest fee by simply dividing total system costs by the total number of manifests in use. There are advantages to parsing the fees based on the type of manifest (*i.e.,* electronic or paper types), since some system costs are uniquely associated with paper manifests, while others tend to follow electronic manifest usage. Thus, it may be possible to allocate system costs more equitably to the manifest types that bear their related costs, and perhaps incentivize electronic manifest usage more than would be possible if costs were simply allocated to all manifests equally.

2. System Related Cost Categories

There are several categories of costs under which e-Manifest system-related costs may be grouped and explained. First among these groupings, it is important to distinguish between the System Setup Costs and costs that are described as Operations and Maintenance Costs.

a. *System Setup Costs.* EPA considers System Setup Costs to include all system-related costs, intramural and extramural, prior to the time the e-Manifest system is fully operational. Intramural costs are those costs related to the efforts exerted by EPA staff and management in developing, operating, and managing e-Manifest. Extramural costs are those costs related to the acquisition of contractors to develop and operate the e-Manifest system. EPA will track System Setup Costs distinctly from post-activation Operations and Maintenance (O&M) Costs, since the e-Manifest Act requires that the System Setup Costs, which are to be funded initially by seed appropriations, be offset eventually by user fee collections and repaid to the Treasury. Thus, System Setup Costs will be tracked distinctly for the period of system development, which EPA anticipates will require three to five years of effort.

EPA will amortize the System Setup Costs over an initial period of system operations. EPA is proposing an amortization period for System Setup Costs of five years, which EPA believes provides sufficient time to recover the System Setup Costs, while not significantly increasing the fees for the user community.[9] Once the system is operational, all system costs will be tracked as O&M Costs in EPA's fee calculations and in its accounting of system expenditures. Once the five-year amortization period has elapsed, EPA will drop the factor in the fee formula representing the amortization of System Setup Costs from the formula, and will thereafter track all costs as O&M Costs.

Within the broad category of System Setup Costs, EPA will track and calculate fees based on two distinct sub-categories of costs: (1) System Procurement Costs; and (2) EPA Program Costs dedicated to developing the system. The Procurement Cost sub-category is straightforward and includes all the IT-related contracting costs associated with the acquisition and development of the actual e-Manifest IT system and all e-Manifest related IT system services (*i.e.,* accounting, billing, collection, and reporting systems).

The EPA Program Cost sub-category can be described as the EPA Full Time Equivalent (FTE representing EPA's staffing/labor costs) and the non-IT contracting costs to the Agency for developing, running, and managing the system. EPA Program Costs are included in either Setup Costs or O&M Costs based on the year they are incurred. It is the EPA Program Costs that are incurred before the system activation date that we are including in this discussion of Setup Costs. These are EPA staff and non-IT[10] contract costs necessary to the design and development of the e-Manifest system itself and to the development of the overall e-Manifest program. Thus, these costs would include the costs of EPA staff and contracts used for the system planning and design effort, for development of the system architecture, for development of the program regulations, including this user fee regulation, for conducting program outreach and oversight prior to activation, for developing the Help Desk, for developing the FACA Advisory Committee required by the e-Manifest Act, for conducting Capital Planning and Investment Control (CPIC) and other budget related activities for the program, for conducting program management, and other costs related to establishing the e-Manifest system and program prior to the system's activation. All of these types of costs would be EPA Program Costs and included in the System Setup Cost category as they are incurred prior to the system activation date.

b. *Operations and Maintenance Costs.* The Operations and Maintenance (O&M) Costs include all system-related costs incurred after the e-Manifest system is activated. Important components of O&M costs are the costs of operating the electronic IT system to which electronic manifests will be submitted and all manifest data collected, and the costs of operating the paper manifest processing center that EPA will establish to meet the e-Manifest Act's and One Year Rule's requirements that EPA collect and process the data from any paper manifests that continue in use after the implementation of e-Manifest. In addition to the costs of running the electronic system and the paper processing center, O&M costs also include the same types of costs described previously as EPA Program Costs (EPA FTE and non-IT contract costs), when these costs are incurred *after* the e-Manifest system activation date. Other components of O&M Costs include Help Desk Costs necessary to run the e-Manifest Help Desk that will be established to provide technical support to system users; life-cycle enhancements to all e-Manifest system related services, such as the services required for e-Manifest billings and collections; and the CROMERR Costs, which are the costs of implementing solutions for e-Manifest that meet the requirements for electronic reporting to EPA under the Agency's Cross Media Electronic Reporting Rule or CROMERR. The latter costs include certain registration requirements for users and signatories, the requirements for identity proofing (when required) e-Manifest signatories, the costs of collecting, processing, and maintaining Electronic Signature Agreements executed by signatories, and the requirements for producing and retaining copies of record of electronic manifests submitted to the system.

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[9] EPA analyzed the effects of a payback period of three, five, and ten years, and found that varying the amortization period had little effect on the total costs, resulting fee levels, or the efficiency of the proposed fee levels. EPA found that its total system costs are affected much less by the fixed costs of system development than by O&M costs, particularly, the marginal costs of processing manifests submitted to the system and the operations and maintenance costs for the system itself. The Agency's analysis of amortization options showed only a nominal effect on total fixed costs and on how the system's fixed costs would be collected each year in user fees. The impacts of amortization period on total costs and their recovery with the proposed rule's fee levels are overshadowed by the impact of other fee design elements.

[10] EPA is tracking closely its e-Manifest program costs by the date the costs are incurred, which is relevant to their classification as System Setup or as O&M costs. Likewise, EPA will establish distinct codes for tracking its contract tasks and their costs so that EPA can accurately distinguish its IT contracting costs (tracked either as System Procurement Costs and Electronic System O&M Costs depending on date incurred) from its non-IT contracting costs, which will be tracked in the formula as EPA Program Costs.

c. *Indirect costs.* Indirect costs are the intramural and extramural costs that are not captured in any of the previously defined cost categories, but that are necessary to capture because of their necessary enabling and supporting nature, and so that our proposed user fees will accomplish full cost recovery. Indirect costs typically include such cost items as physical overhead, maintenance, utilities, and rents on land, buildings, or equipment. As discussed in section 2(c)(3)(A) of the statute, the indirect costs include the EPA costs incurred from the participation of EPA offices and upper management personnel outside of the immediate program office (the Office of Resource Conservation and Recovery or ORCR) that is primarily responsible for implementing the e-Manifest program. These other EPA offices and upper management personnel provide support to all aspects of the e-Manifest program, including promulgating the e-Manifest implementing and fee regulations, supporting the IT system planning and system acquisition, and participating in the e-Manifest Advisory Board and the related Federal Advisory Committee Act (FACA) processes. Indirect costs are disparate and more difficult to track than the other cost categories, because they are typically incurred as part of the normal flow of work (*e.g.,* briefings and decision meetings involving upper management) at many offices across the Agency and cannot be attributed directly to the activity they support. Also, the level of indirect costs incurred by a particular office is also likely to change as the e-Manifest program develops and its needs change. For these reasons, it is not practical to account for indirect costs in the same manner as the other categories of e-Manifest costs.

EPA will account for indirect costs in the proposed e-Manifest user fee formulas by the inclusion of an indirect cost factor. This rate is multiplied by the base fee that accounts for the program's direct costs. The product of the indirect cost rate and the base fee is then added to the base fee to determine the final, comprehensive user fee.

The Agency-wide indirect cost rate is determined for all EPA user fee programs by the Agency's Office of Financial Management, according to that Office's indirect cost methodology, and as required by Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Standards and Concepts. The Office of Financial Management publishes annually an indirect cost rate for each of the Agency's Regional Offices and for each of the Assistant Administrator-level program offices within EPA Headquarters. An indirect cost rate customized for the e-Manifest program will be developed, based on consideration of the EPA's existing indirect cost methodology and other indirect costs required to support the e-Manifest program.

Therefore, once the appropriate indirect cost rate for e-Manifest is developed, then the indirect costs for e-Manifest would be captured by our proposed fee formulas as the product of the base fee times that indirect cost factor.[11] The result is that the total or comprehensive user fee is simply the base fee formula times the expression (1 + indirect cost rate).

3. Types of Manifests and Fee Categories

Another piece of information relevant to determining applicable e-Manifest user fees is the type of manifest that is being submitted to the system. In this regard, there are electronic manifests that will be completed by users electronically and submitted electronically to the system, and there are several types of paper manifests that will be received and processed by the e-Manifest system's paper processing center.[12]

Under the One Year Rule, EPA indicated that it would accept paper manifest data from final manifest copies submitted by TSDFs by several modes of delivery. First, paper manifests could be mailed by TSDFs directly to EPA's processing center, where personnel staffing that center would open the mail, scan the paper forms to create image files, and manually key in the data to the national data repository. These paper manifests would likely undergo a significant level of Quality Assurance (QA) activity as well, as the experience of EPA's state partners with manifest tracking systems suggests that a significant number of paper manifests will present legibility issues, typographical errors, missing data, or other errors requiring follow-up with submitters to clarify or correct. Also, state partners advise EPA that they frequently find extraneous documents or mis-directed mail included with manifests mailed to their systems, and these require clerical attention to sort and return to their senders.

Second, the One Year Rule allows TSDFs to submit scanned images of paper manifests to the processing center in lieu of mailing paper forms to EPA. These scanned image submissions involve less clerical effort insofar as opening mail and returning extraneous mailings, but still require clerical effort to conduct QA activities and to key the data into the data repository.

Third, the One Year Rule provided TSDFs with the alternative of submitting the data from paper manifests to EPA as an image file and data file (*e.g.,* XML file) that can be uploaded into the data repository. The receipt of data files from the TSDFs would involve less processing effort for EPA, as the data could be loaded to the data repository and merged with e-Manifest data directly with little, if any, QA or manual data entry.

Thus, for purposes of this proposed rule, EPA believes there would be four distinct types of manifests that may be submitted to the system for processing. These are electronic manifests submitted in accordance with the national electronic format supported by the system, and three possible types of manifest submissions arising from the continued use of paper manifests: Paper manifests mailed to the EPA system operator, scanned images of paper manifests uploaded to the system, and an upload of both an image file produced from a paper manifest and a corresponding data file produced by the TSDF's data system.

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[11] The EPA is developing an indirect cost rate for the e-Manifest Program. The FY 2015 Interagency Agreement (IA) indirect cost rate for OLEM is 19.74%. This rate is recalculated each year and is therefore subject to change and consideration regarding its applicability to e-Manifest. EPA will calculate the fees with the Final Rule using the then applicable-Manifest Program indirect cost rate, which will be based on a consideration of the OLEM IA indirect cost rate and other appropriate indirect costs attributable to e-Manifest.

[12] Unlike electronic manifests, paper manifest copies (or the scanned images and data from paper manifests) are to be submitted to the national e-Manifest system for data processing purposes only, and are not submitted as copies of record intended to replace paper manifests as valid and enforceable documents. The ink-signed paper manifest copies that are retained at waste handler sites remain the enforceable copies of record where paper manifests continue in use to track waste shipments. The paper copies (or scanned images and data from them) submitted for data processing purposes require no CROMERR related processes or electronic signatures to accompany their submission.

As explained in detail later in this document, EPA believes that the several types of manifest submissions discussed here would involve differing effort and burden for EPA or its system operator to process. Indeed, since the premise of this proposed rule is that e-Manifest user fees should be charged on a per manifest basis, the Agency believes that the varying processing burden associated with these four distinct types of manifest submissions would be the key differentiating factor insofar as determining the appropriate user fee for manifests that would be submitted to the system. The varying processing effort involves varying manual labor and other costs arising from each type of submission. These varying human labor and related costs can be thought of as the marginal costs of entering the data from each method of submission and ultimately merging the information into the national e-Manifest data system. Therefore, in the several user fee formula options that EPA considered for this action, we focus on this differing marginal cost per manifest submission type as a significant factor distinguishing the fees calculated by the proposed formula. As further explained in the discussion of the proposed formula, another key factor distinguishing the amount of the calculated fees would be the extent to which the different manifest types are assumed to share in the other O&M costs associated with operating the electronic manifest system and also the paper processing center. The result would be a fee schedule that would announce four distinct per-manifest fee categories based on the four types of manifest submissions, and the varying extent to which marginal labor costs and other system O&M costs would be allocated to each of the submission types by the formula.

4. What formula options did EPA consider?

EPA considered three distinct fee formula options, which vary by the extent to which they distribute the marginal manifest processing costs and other system O&M costs across the different manifest submission types. As a result, the three fee formula options vary by the extent to which they differentiate the applicable fees for each of the four manifest submission types.

The fee formula options can be compared on the basis of three important characteristics: Simplicity, Equity, and Resilience. Simplicity refers to the presence or absence of fees differentiated by manifest type. Equity refers to the extent to which a fee formula generates fees that reflect the true costs of each manifest type. Resilience refers to the extent to which uncertainty in the component variables of a formula affects its ability to assess accurate fees, and by extension realize full cost recovery.

Each fee formula option entails a different trade-off between these characteristics, with no formula option outperforming the other two on every characteristic. The first option, the average cost fee, prioritizes simplicity over equity and resilience. The second option, the marginal cost fee, prioritizes resilience and equity over simplicity. The third option, the marginal cost highly differentiated fee, is the most equitable but at the loss of resilience and simplicity. The three fee formula options are explained in greater detail in the following sections.

a. *Average Cost Fee Option.* The first option is a basic ''average cost fee'' formula. Under this option, all the manifest submission types would pay the same average fee. This option first calculates a weighted average marginal cost for processing all manifest submission types. To this weighted marginal cost is added another factor which distributes all other system setup and O&M costs equally across all manifests expected to be in use. In other words, under this option, marginal costs are averaged, setup and O&M costs are allocated equally to all manifest types, and there is no attempt to use the fee formula to differentiate among the manifest types.

The mathematical expression of the Average Cost Fee Option is as follows:

$$Fee = \left(Average\ Marginal\ Cost + \frac{System\ Setup\ Cost}{Years\ \times N_t} + \frac{O\&M\ Cost}{N_t}\right) \times (1 + Indirect\ Cost\ Factor)$$

Where:

$$Average\ Marginal\ Cost = \frac{\sum(N_i \times Marginal\ Cost_i)}{N_t}$$

System Setup Cost = Procurement Cost + EPA Program Cost

O&M Cost = Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services

This option has the advantage of simplicity, as it results in one average or standard fee to be paid on a per-manifest basis for all four of the manifest submission types. However, it is quite sensitive, meaning it may not collect sufficient revenue, since the use of a weighted average marginal cost assumes that EPA can accurately predict the prevalence of each manifest submission type each year. If the actual distribution of manifest types differs from these projections, then this formula will likely under- or over-collect fee revenue relative to program costs.

Additionally, this option is not very equitable. There is simplicity in using this formula to arrive at a standard fee, but it results in this option permitting a portion of the costs of paper manifest use to be subsidized by electronic manifests. Paper manifest submission types will almost certainly bear greater marginal costs than fully electronic manifests, but this formula does not recognize such differential costs when it prescribes one average fee for all manifests. Therefore, this option would not be very helpful in effectuating the Agency's goal of promoting the greater use of electronic manifests in the system.

b. *Marginal Cost Differentiated Fee Option.* The second option considered by EPA would attempt to differentiate among the different manifest submission types by focusing most on the varying marginal or human labor cost of processing each manifest submission type into the national e-Manifest data system. As a part of the economic analysis EPA conducted for these fee formula options, EPA developed estimates of the marginal, human labor cost of processing paper manifests received in the mail, processing image files uploaded to EPA, processing data (XML) files uploaded to EPA with image files, and processing fully electronic manifests into e-Manifest. This option keys off the differing marginal cost of processing manifests as the factor that differentiates the resulting manifest user fees. Otherwise, it addresses System Setup Costs and O&M Costs in the same manner as Option 1, that is, by amortizing system setup costs over five years, and by otherwise distributing setup costs and O&M costs from overall systems operations equally across all manifest submission types.

The mathematical expression of the Marginal Cost Differentiated Fee Option is as follows:

$$Fee_i = \left(Marginal\ Cost_i + \frac{System\ Setup\ Cost}{Years \times N_t} + \frac{O\&M\ Cost}{N_t}\right) \times (1 + Indirect\ Cost\ Factor)$$

Where:

System Setup Cost = Procurement Cost + Program Cost

O&M Cost = Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost + EPA Program Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services + CROMERR Cost

This fee formula option is premised on our belief that the marginal, human labor costs of opening mail, conducting QA on paper submission types, and conducting data key entry on the paper submission types (other than XML file uploads that load directly into the system) are the costs that most clearly and significantly differentiate manifest submissions for purposes of determining fees. This option further assumes that since data from all manifest types will be entered into the e-Manifest system's data repository, it is appropriate for all paper submission types to contribute to the electronic system's setup and O&M costs. The option is the most resilient as it does not involve any projections of the prevalence of manifest types such as is involved with the calculation of a weighted average marginal cost under Option 1, so it is less likely to under- or over-collect revenue should such projections not pan out. Another significant advantage of this option is that because it would result in higher differential fees for paper manifest submission types, it is consistent with our goal of promoting the greater use of electronic manifests.

A potential weakness in this option is that it may not be sufficiently aggressive insofar as requiring paper manifest types to bear the full differential costs associated with managing paper manifest submissions. Under this option, for example, electronic manifests share in the costs of establishing the paper processing center and in the O&M costs (other than labor costs) of running the paper center. EPA believes that this option could represent a useful bridge toward the greater use of electronic manifests, particularly in the initial years of e-Manifest program implementation. It will likely require several years for the full transition to electronic manifesting to occur, as manifest users will need to acquire the hardware and capability to participate in e-Manifest, and they will need to gain confidence in the reliability of electronic manifests relative to the paper forms that are so familiar and have served the needs of the program for many years. When EPA discussed fee options with the hazardous waste management community during the development of this proposed rule, industry members confirmed that they anticipated a transition to electronic manifesting, with perhaps a period of time when industry members may first submit XML data file uploads to EPA from their customers' paper manifests, and over time, acquire the technology and systems to migrate to supplying fully electronic manifests for their customers' use. EPA heard concerns from industry members that the fee formula should be sensitive to the need for a period of transition, and that there should not be too great a premium fee for paper manifest use at the outset.

Thus, EPA believes that this second fee option reflects these concerns, and is consistent both with encouraging electronic manifest use, while recognizing that a transition from paper submissions to XML file submissions may be the course that e-Manifest implementation follows on its ultimate path to electronic manifest use. However, EPA does remain concerned that, over time, the Marginal Cost Differentiated Fee Option may not be effective to promote the full transition to electronic manifesting, and could instead result in the interim arrangements—the submission of XML files produced from paper manifests—becoming the end result. While such an outcome would produce a robust data base of manifest data from designated facilities, it would perhaps leave in place a regime in which inefficient and burdensome paper manifests remain in wide circulation among all manifest users.

c. *Marginal Cost Highly Differentiated Fee.* As a third option for determining the e-Manifest user fee, EPA also considered an approach that goes further than the previous option in requiring paper manifest submission types to bear more of the program costs arising from the continued use of paper manifests. This third fee formula option, the Marginal Cost Highly Differentiated Fee option, is structured similarly to the second option, but with one key difference. Under the third option, the O&M costs of running the paper processing center are allocated only to paper manifest submission types, and not shared equally with the electronic manifests. The premise of this option is that since fully electronic manifests will have no contacts or dealings with the paper processing center, then these fully electronic manifests should bear no part of the costs of operating the paper center. Thus, in addition to the marginal, human labor costs of processing paper manifest types that are allocated to paper manifest submissions under Option 2, this option more fully allocates the program costs of managing paper manifests to the paper submission types, by adding the other non-labor O&M costs of the paper center to the cost burden to be borne by paper submission types. This also may encourage industry users to migrate to electronic manifests more expeditiously, since it will not mask the true costs of processing paper manifests by subsidizing the non-labor costs of the paper processing center, as occurs with Option 2.

This option does not present the simplicity of Option 1, as the fees it would produce clearly differentiate among several manifest submission types. This option would also appear to be the most equitable of the options, as it would require paper manifest submissions to bear both the labor and non-labor costs of the paper processing center, rather than sharing the non-labor costs with electronic submissions. However, the equity of this option is achieved at the expense of resiliency, as this option would require that EPA estimate with precision the number of electronic manifest and the number of paper-variant manifests in order to properly assign non-labor paper center O&M costs to paper manifests. Thus, as a result of uncertainties affecting the numbers of electronic and paper submission, this fee option is more likely to over- or under-recover revenue than Option 2. Moreover, because this option is somewhat more aggressive than the second option in allocating program costs to paper manifest types, it could be more effective than Option 2 in promoting the greater use of electronic manifests. However, this option could be perceived by users as imposing initially too great of a premium fee on paper manifest types, before electronic manifesting is widely available to and embraced by users.

Mathematically, the Marginal Cost Highly Differentiated Fee option can be expressed as follows:

$$Fee_i = \left(Marginal\ Cost_i + \frac{System\ Setup\ Cost}{Years \times N_t} + \frac{O\&M_i\ Cost}{N_i} \right) \times (1 + Indirect\ Cost\ Factor)$$

Where:

System Setup Cost = Procurement Cost + Program Cost

$O\&M_{\text{fully electronic}}$
= Electronic System O&M Cost + EPA Program Cost
+ CROMERR Cost
+ LifeCycle Cost to Modify of Upgrade eManifest System Related Services

$O\&M_{\text{all other}}$
= Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost
EPA Program Cost + CROMERR Cost
+ LifeCycle Cost to Modify or Upgrade eManifest System Related Services

5. What fee formula is EPA proposing?

EPA's preferred option for this proposed rule is actually a combination of the second and third options discussed earlier. In other words, EPA is proposing that it would initially implement the Marginal Cost Differentiated Fee Option (2nd option), but would reserve the ability to transition to the Marginal Cost Highly Differentiated Fee Option (3rd option), should a triggering condition included in this rule be actuated, suggesting that a more aggressive fee formula is needed to promote greater levels of electronic manifest use.

By proposing this combined or hybrid option, EPA acknowledges that the second option represents a useful compromise between promoting electronic manifest use initially, while recognizing that a transition from paper submissions, to XML submissions, to fully electronic submissions may be a useful path for industry and the e-Manifest system to pursue. EPA believes that the Marginal Cost Differentiated Fee Option is consistent with such a transition approach. Indeed, if the e-Manifest option is fully adopted by most hazardous waste handlers, the fee formula represented by this option may be the only fee formula necessary to determine fees for the e-Manifest program.

However, EPA is concerned that after the desired transition period has run, that it may require some additional incentives to effectuate a fuller migration to electronic manifest usage. Under the second formula option, the fee differential between electronic manifests and those paper manifest submissions uploaded by TSDFs as XML files is not very great, with the XML submissions bearing fees that are perhaps only 15% greater than the electronic manifests. Paper manifests mailed to EPA for processing would incur a per-manifest fee about 88% greater than the fee for electronic manifests. Thus, there is a possibility that the transition to XML file submissions from paper manifest use could become a plateau in the program implementation that is difficult to move beyond without greater fee incentives. So, upon an appropriate triggering condition, EPA believes it would be useful to change the fee formula to the third formula option, so that the paper submission types bear a fuller share of the program costs related to using and processing paper manifests.

Another issue for this proposed rule, therefore, is what is the appropriate condition that should trigger the implementation of the Marginal Cost Highly Differentiated Fee Option after a transition period? For several years, EPA has indicated to stakeholders and to the program's overseers that the Agency believed that it could accomplish significant paperwork burden reductions and cost savings if 75% electronic manifest usage could be attained after program implementation. Based on very preliminary estimates of possible program adoption rates, EPA further postulated that under favorable conditions, adoption of electronic manifesting by some of the larger manifest user companies might bring about a 75% use rate after a period of about five years. That being the estimate or goal previously announced, EPA believes that this stated goal, with a slight modification to comport with our proposed two-year cycles[13] for reviewing and revising our fee schedules, could represent a useful trigger condition for this proposed rule. Therefore, EPA is proposing that the e-Manifest user fee schedule would be initially developed using the second option's Marginal Cost Differentiated Fee formula for the base fee. EPA is also proposing that if, however, EPA finds after four years of e-Manifest system operations that electronic manifest usage has not yet reached our goal of 75% penetration, then EPA will thereafter use the third option's Marginal Cost Highly Differentiated Fee formula for developing the applicable user fee schedules.

6. Request for Comment

EPA requests comment on its preferred option that would initially calculate per-manifest fees based on the Marginal Cost Differentiated Fee formula, and then transition to the Marginal Cost Highly Differentiated Fee formula should electronic manifests not attain a 75% usage rate after four years of system operations *(If submitting comments on this issue, please use comment header: 3. Fee Methodology).* Do commenters agree that the combination of these two formula options is superior to the other options alone? Do commenters agree with EPA's strategy of starting with the less aggressive fee formula in the initial years of program implementation, to foster a smoother transition from paper manifest use to electronic manifesting? Do commenters agree that after an initial period of transition, it makes sense to adopt a fee formula that more aggressively allocates paper manifest management costs to the paper manifest submission types that remain in use? Has EPA proposed a sensible trigger condition for shifting between the fee formulas? Is the goal of 75% electronic manifest penetration a reasonable goal, and if not, why not? Would some other period be preferable for EPA to measure electronic manifest implementation progress? If so, what is that period of time and why would it be preferable? Is the third fee formula option sufficiently aggressive to accomplish this purpose, and will it likely promote the adoption of higher levels of electronic manifest usage?

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[13] The proposal to publish revised fee schedules at two-year intervals is discussed in the following section III.D, of this preamble. Because we propose to revise the fee schedules at two-year intervals, it makes sense to examine whether electronic manifest use has reached a 75% adoption rate after four years, rather than five years.

In addition, EPA would appreciate comments addressing these fee formula questions *(If submitting comments on any of the questions in the following seven bullets, please use comment header: 3. Fee Methodology).*

- Is the proposed fee formula sufficiently clear insofar as identifying the program costs that will be allocated among manifests, and explaining how the fee amounts will be determined? How can the clarity of the fee formula be improved?
- Do commenters agree with the general premise of the fee formula that per-manifest fees should be charged to manifests based on the type of manifest submission, and that the marginal cost (human labor cost of data key entry and QA activities) should be a significant factor in determining the appropriate fees? What other bases are there for differentiating manifest fees?
- Do commenters agree with the proposed fee methodology that first determines the marginal human labor cost for processing each manifest submission type, and then adds to that cost estimate a factor that distributes setup and O&M costs over the numbers of manifest in use? Are there other fee models that would more effectively and equitably allocate program costs to users and determine appropriate fees for the various manifest submission types?
- Do commenters agree that a five-year amortization period is an appropriate period of time over which to recover system setup costs? Is there another amortization period that EPA should adopt for this purpose, and if so, why?
- Do commenters agree with EPA's analysis of the options considered, and that EPA has selected the most desirable fee option? Does the proposed fee approach promote EPA's goals of accomplishing full program cost recovery and promoting electronic manifest use?
- Has EPA omitted any program costs that should be included in our determination of e-Manifest user fees?
- In developing its fee methodology, EPA has not proposed any specific fee or other incentives to promote desirable materials management behaviors, such as waste minimization or recycling of hazardous secondary materials. In many instances, our hazardous waste regulations provide manifest exemptions for hazardous secondary materials, so in one sense, the user fee costs that this action would impose on shipments subject to the manifest may provide some additional incentive for recycling or waste minimization. Are there other incentives that could be included in this user fee regulation that would promote greater recycling of these materials? If such incentives would involve fee discounts or monetary incentives, how should EPA allocate the revenue effects of such incentives among the manifest users who would pay fees under this action? Are there other incentives that EPA could consider for this user fee regulation? EPA welcomes comments on these matters.

Finally, EPA emphasizes that this proposal addresses the submission of paper manifests by adopting a fee approach that assigns fees to paper manifest submissions from TSDFs based upon the difference in marginal costs of processing the various paper manifest types. The submission of paper forms to EPA by mail would bear the highest fees, while submission of image files, or data and image files, would involve less processing effort and thus reduced fees under the proposed fee methodology.

EPA has heard from TSDFs that they generally would prefer to submit data files from their paper manifests to EPA, rather than incurring the costs of mailing paper forms to EPA for full processing. However, EPA has consulted primarily with a trade association (the ETC) that is comprised of larger TSDFs, so we do not know whether mid-size or smaller TSDFs would be similarly inclined to submit data files and scanned images of manifests to EPA and avoid mailing paper forms to EPA for processing. The differential fee approach we propose should itself discourage TSDFs from submitting large numbers of manifests by mail. However, it is difficult for EPA to project with confidence how many paper manifests will be mailed to the Agency in the initial years of e-Manifest operations. This is a concern for EPA, as the processing of mailed forms could involve significant personnel and contractor costs for opening and screening mail, for data key entry, document archiving, and for QA activities related to resolving data quality issues. Paper processing costs could dominate the O&M costs in the early years of operation, and if mail submissions occur in unexpectedly large numbers, EPA may need to increase fees or consume more of its appropriated funds than anticipated to process mailed manifests. Therefore, EPA is requesting comment on another approach under which TSDFs would be restricted to submitting their paper manifest data to EPA by electronic means only, that is, by uploading image files to EPA, or by uploading a data file (*e.g.,* XML file) of manifest data accompanied by an image file *(If submitting comments on this issue, please use comment header: 4. Disallow Postal Mailed Manifests).* Would TSDFs support an option that precluded their mailing paper manifest forms to the Agency, as this would reduce EPA's processing costs and the associated user fees? Are there TSDFs that would find this approach objectionable, because it requires the capacity to scan documents and upload data to EPA, or for other reasons? Is the proposed differential fee approach for paper manifest types sufficient to regulate the number of mail submissions to EPA, or is a more forceful approach (*i.e.,* restricting paper copy data submissions to digital methods only) necessary to keep the paper processing costs and fees in check? Are the processing efforts related to mailed paper manifests that different from the effort related to processing image files sent to the Agency? [14] EPA requests specific comments on the merits of an approach that would restrict TSDFs to submitting their paper manifest data to the Agency by digital methods only, and not by mailing hard copies to the EPA system.

7. Illustrative Range of User Fees Using the Proposed Fee Formula

EPA has developed illustrative ranges of user fees based on varying the system development costs and allocating such costs across a large range of possible manifest usage numbers. These illustrative ranges are intended to show the relative difference in possible fee amounts among the various manifest submission types. The illustrative ranges also suggest generally the users' possible exposure to fees, and show the effect on fees of varying the overall system-related costs and the numbers of manifests that will share in these costs when fees are assessed. The result is a possible or illustrative range of user fee estimates that are displayed in the following tables. Since EPA's fee determination model was based on the varying marginal cost of processing the several types of manifest submissions, we have included a distinct table presenting illustrative fee ranges for fully electronic manifests and each of the three paper manifest submission types.

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[14] EPA anticipates that fees for processing mailed manifests will be about 20–25% greater than for scanned images, because manifests delivered by mail will need to be opened, sorted for errant submissions, logged, stored and retrieved prior to processing, scanned by paper center personnel, and then disposed of after scanning.

Per Manifest Fee, Fully Electronic Manifests

Number of manifests (millions)	System procurement costs (millions $)		
	10	15	20
5	9.00	9.00	9.50
4.5	10.00	10.00	11.00
4	11.50	11.50	12.00
3.5	13.00	13.00	14.00
3	15.00	15.50	15.50
2.5	18.00	18.50	19.00
2	23.00	23.50	24.00

Per Manifest Fee, XML Submissions From Paper Manifests

Number of manifests (millions)	System procurement costs (millions)		
	10	15	20
5	11.50	11.50	12.00
4.5	12.50	12.50	12.50
4	14.00	14.00	14.50
3.5	15.00	15.50	15.50
3	17.50	18.00	18.00
2.5	20.50	21.00	21.50
2	24.50	25.00	25.50

Per Manifest Fee, Image File Submissions from Paper Manifests

Number of manifests (millions)	System procurement costs (millions)		
	10	15	20
5	17.00	17.00	17.50
4.5	18.00	18.00	18.50
4	19.00	19.00	20.00
3.5	20.50	21.00	21.50
3	23.00	23.50	23.50
2.5	25.50	26.50	27.00
2	30.50	31.00	31.50

Per Manifest Fee, Postal Mail Manifests

Number of manifests (millions)	System procurement costs (millions)		
	10	15	20
5	21.00	21.00	21.50
4.5	22.00	22.00	22.00
4	23.50	23.50	24.00
3.5	24.50	25.00	25.00
3	27.00	27.50	27.50
2.5	30.00	30.50	31.00
2	34.00	34.50	35.50

D. How does the proposal address fee trajectory issues?

1. Background

The topic of fee trajectory is concerned with the actions that EPA will take to adjust e-Manifest user fees to inflationary or other program cost changes, so that fee schedules and resulting revenues keep pace with program costs. In the document, *Federal User Fees, A Design Guide,* GAO emphasized the significance of this issue in ensuring that a user fee program is able to maintain full cost recovery. GAO noted that if fees are not reviewed and adjusted regularly, programs will run the risk of overcharging or undercharging users, while also raising equity, efficiency, and revenue adequacy concerns. GAO further noted that the questions affecting fee trajectory and revisions include:

- What are the fixed and variable costs of fee-funded activities?
- What are the timing and pattern of program spending?
- How quickly can the program adjust fee rates in response to changes in collections or costs?
- Are there other sources of funding or authority for a reserve that may mitigate shortfalls?
- Can the Agency update its fees more frequently by rule, and if so, how will the Agency enhance stakeholders' trust in its revision methodology?

The e-Manifest Act does speak to several of these matters. Sections 2(c)(1) and 2(c)(3)(B) of the Act clearly confer discretion on EPA to set and periodically adjust e-Manifest fees to ensure alignment with program costs. The latter section authorizes EPA to consult with the System Advisory Board on fee revisions, and to increase or decrease the amount of fees to a level that results in the collection of revenue that is sufficient, but not more than reasonably necessary, to cover current and projected system related costs (including upgrades). Fee adjustments are also required to maintain revenues at a level that will minimize the accumulation of unused amounts in the System Fund.[15]

On the question of the timing of fee revisions, the Act provides that an initial adjustment to user fees shall be made at the time at which initial system development costs have been recovered, and periodically thereafter, upon receipt of information in annual financial accounting or audit reports, disclosing a significant disparity between fee collections for a fiscal year and expenditures made that year for program related costs. Thus, EPA does have discretion to revise fees as necessary to maintain balance between revenues from fee collections and program costs as changes occur over time. The e-Manifest Act authorizes EPA to accumulate a revenue surplus of not more than $2 million over the initial three-year period of operations, presumably out of recognition that there might be imprecision in cost estimates and revenue forecasts in the initial period of system operations.

EPA attaches great significance to the role of the System Advisory Board in consulting with EPA on fee revisions. As the Board will be comprised of a cross-section of program stakeholders, EPA believes that this consultation role will be very important to maintaining trust in EPA fee setting and revision methodology. Financial reports and audits will be shared with the Advisory Board, and current and projected program budgets and their effects on proposed fee revisions will be a regular agenda item for EPA's discussions with the Advisory Board. Therefore, it is essential that these discussions, our fee setting methodology, and our fee revision methodology be rational and transparent to our stakeholders. Thus, this section of the preamble is intended to explain the fee revision methodology and schedule we propose to follow in our regular efforts to maintain balance between fee collections and program costs.

Additional Federal guidance relating to fee revisions appears in OMB Circular A–25. In Section 8.e. of this Circular, addressing Agency responsibilities, OMB states that each agency will review the user charges for agency programs biennially to include, among other things, "assurance that existing charges are adjusted to reflect unanticipated changes in costs or market values." Thus, it is the objective of this action to propose a fee trajectory or revision methodology that implements the direction provided by the e-Manifest Act, as well as the applicable guidance in Circular A–25 and the GAO Design Guide.

2. What methodology and process is EPA proposing for e-Manifest fee revisions?

EPA is proposing a fee revision methodology under which the Rule's fee formula would be re-run at two-year intervals, with the most recent program cost and manifest usage numbers being used in running the fee formula to calculate the fees for each manifest submission type. The result would be a fee schedule that announces the fees for each of the next two years. EPA would publish the revised fee schedules at the e-Manifest program's Web site, and would also provide a link to users when they access the e-Manifest system so that they could be immediately notified of and directed to the new fee schedules. We would provide this type of actual notice to system users (via a link to the publication at the program's Web site) 90 days prior to the effective date of the new fee schedule. This proposal would require revisions to several provisions of the One Year Rule that EPA issued in February 2014. In the One Year Rule, EPA stated in several regulatory provisions that it would update e-Manifest user fees from time to time, and that fee schedules would be published as an appendix to 40 CFR part 262. This proposed rulemaking would instead publish the fee schedules and their revisions to users at the e-Manifest program's Web site, and not codify the fee schedules in an appendix to part 262. Therefore, this proposed rule would delete the requirement to codify fee schedules in a part 262 appendix from the current regulations at 40 CFR 262.24(g), 263.20(a)(8), 264.71(j), and 265.71(j).

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[15] EPA must recover the system development costs and repay the Treasury for the funds advanced for system development work. EPA will amortize development costs over 5 years, and while the fee collections corresponding to these development costs may accumulate in the System Fund, they would not be counted toward any surplus.

Thus, while EPA would develop the initial fee schedule under this action using notice-and-comment rulemaking procedures, it is not EPA's intent to issue the subsequent fee schedule revisions through notice-and-comment proceedings. Rather, EPA is proposing its methodology for fee calculations and revisions in this rulemaking, and when we finalize this rule in response to comments, our final methodology will be announced and used to calculate the initial set of program fees. However, with each two year fee revision cycle thereafter, EPA will re-run the fee calculations using the latest program costs and manifest numbers, but will not subject the revised fee schedules to notice-and-comment proceedings, as long as the fee revision calculations are based on the same fee methodology that we develop with this action. Our intent is to develop a fee setting and revision methodology that would be durable and could be used repeatedly over the coming years, with adjustments to fees being announced consistently with the formulas and adjusters included in this methodology. However, if EPA alters significantly its methodology for calculating or adjusting fees, or the fees are affected by significant new program costs not anticipated in the formulas we include in our initial fee-setting methodology, then EPA would follow notice-and-comment procedures before announcing any revised fees based on a significantly new fee methodology.

EPA also considered a process under which the Agency would run the fee formula with the most recent costs and manifest usage numbers on an annual basis. While this option would appear to be most responsive to program cost changes, it is not our preferred option for this proposal. EPA is instead proposing a two-year cycle for re-running the fee formula and publishing fee schedules, because we believe that a two-year cycle strikes a better balance between revenue accuracy, process burdens, and fee program stability for users. With a two-year cycle, the user community will know and be able to budget for the fees that will be owed for each manifest submission over a more stable period of two years, rather than having to deal with a fee schedule that is constantly under revision. For EPA, there will also be advantages, in that the Agency will not need to incur the administrative costs of re-issuing fee schedules and publishing them each year, and explaining the resulting fee changes to the Advisory Board and user community. Moreover, EPA believes that a two-year cycle for issuing fee schedule revisions is consistent with the guidance of OMB Circular A–25, which requires agencies to conduct biennial reviews of its user fees, including adjustments in fee charges.

3. What adjusters would be included in the proposed fee revision methodology?

Obviously, with each re-running of the fee setting formula at our proposed two-year interval, the fees that are so determined will have been "adjusted" to reflect the most recent program costs from each of the cost categories discussed in the formula, and to reflect the number and type of manifest submissions. Nevertheless, we are proposing additional adjusters to further enhance our ability to keep fee revenues in balance with program costs.

a. *Inflation Adjuster.* First, since fee schedules will be announced for each of the two years following the issuance of the new fee schedule, we believe it may be necessary to include an adjuster to account for inflationary effects between the first and second years of each fee schedule. While inflation has been very modest in recent years, and it may not seem worthwhile at existing inflation rates to adjust for inflation in the second year's schedule, it is not clear that the recent experience with marginal rates of inflation will continue into the future. Since EPA desires to establish a durable fee revision methodology that will service the program's needs for several years, we believe it is prudent to include an inflation based factor to deal with inflationary impacts to program costs between the two years covered by each fee schedule.

One such inflation based adjustment would make use of the Consumer Price Index (CPI) or similar index of price or labor cost changes to represent the impact of inflation in changing the program costs to be recovered from user fees. It is not uncommon for the CPI that is published by the Bureau of Labor Statistics (BLS) to be used in fee programs such as e-Manifest to represent the impact of inflation on program costs generally. Given the manner in which the CPI is determined by BLS, the CPI may not be an entirely accurate measure of the changes in the costs of labor and IT services and commodities that are being purchased to support the e-Manifest project. However, absent a demonstration that there is another index that is more specific to and more representative of program costs changes for e-Manifest, the Agency is proposing to rely on the use of the CPI as a sufficiently representative index for our fee adjustment purposes.

According to BLS, the CPI is intended as a measure of the average change over time in the prices paid by urban consumers for a so-called "market basket" of consumer goods and services. The CPI market basket is determined from surveys of the purchases and spending habits by several thousand urban families from around the country. For this urban population, the CPI market basket represents goods and services purchased for consumption from more than 200 categories of items drawn from eight major groups: Food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services. Charges for certain government services, such as water and sewer charges, auto registration fees, and vehicle tolls are also included in the calculation of the CPI. The broadest and most comprehensive CPI published by the BLS is known as the All Items Consumer Price Index for All Urban Consumers (CPI–U) for the U.S. City Average, 1982–84 = 100. Many other CPI indices are published, involving various seasonal or regional adjustments or to specifically include or exclude certain goods or services. However, for purposes of e-Manifest fee inflation adjustments, EPA proposes to rely on the CPI based on all items, and not seasonally adjusted.

The CPI is certainly a commonly relied upon measure of inflation, which has been defined as a process of continuously rising prices or of the continuously falling value of money. The CPI is skewed toward consumer goods and services, so it does measure inflation as experienced by consumers in their day-to-day living expenses. However, it is not the only measure of inflation that is available as a gauge of inflation's possible effects on e-Manifest program costs. There is also a Producer Price Index (PPI) for measuring inflation at earlier stages of the production process; there is an Employment Cost Index (ECI) to measure the effects of inflation in the labor market; and there is a Gross Domestic Product Deflator to measure inflation experienced by both consumers and governments and other institutions providing goods and services to consumers. There are also other more specialized measures that could be used for this purpose as well. However, other federal user fee programs tend to use the CPI as the means to measure inflationary impacts on their program costs, and barring persuasive evidence that there is a more suitable index for e-Manifest, we believe that the CPI should be sufficient for this purpose.

A CPI-based adjuster used to adjust the second year of e-Manifest fees in a two-year fee schedule could be structured as follows:

$\mathrm{Fee}i_{\mathrm{Year\ 2}} = \mathrm{Fee}i_{\mathrm{Year1}} \times (\mathrm{CPI}_{\mathrm{Year2-2}}/\mathrm{CPI}_{\mathrm{Year2-1}})$,

Where

$\mathrm{Fee}i_{\mathrm{Year2}}$ is the Fee for each type of manifest submission *"i"* in Year 2 of the fee cycle,

$\mathrm{Fee}i_{\mathrm{Year1}}$ is the Fee for each type of manifest submission *"i"* in Year 1 of the fee cycle, and

$\mathrm{CPI}_{\mathrm{Year2-2}}/\mathrm{CPI}_{\mathrm{Year2-1}}$ is the ratio of the CPI published for the year two years prior to Year 2 to the CPI for the year one year prior to Year 2 of the cycle.

Thus, by factoring the Fee for Year 1 for each manifest submission type by the ratio of the two most recent years' CPI's, the result would represent the second year fee amount corrected for inflation under this proposed rule.

In summary, EPA is proposing an inflation adjustment factor predicated on the use of the CPI–U, for all items, not seasonally adjusted, as a sufficiently representative inflationary index and a means to adjust e-Manifest user fees for inflation between the first year and second year of the two-year fee schedules that EPA will develop and publish to the e-Manifest program Web site. We request comment on this aspect of the proposed rule *(If submitting comments on this issue, please use comment header: 5. Inflation Adjuster).*

b. *Revenue Recovery Adjusters.* In addition to an inflation adjuster, EPA is proposing an additional adjuster that would be aimed at recapturing revenue that was lost on account of imprecision in estimating the numbers and types of manifest submissions that would be processed by the e-Manifest system. We also are proposing an adjuster that would recover revenue lost on account of manifest submissions that were uncollectable from the users that submitted manifests but did not pay their fees when due or in response to collection actions. Unlike the inflation adjuster, which operates to adjust fees between the first and second years of each two-year fee cycle, these two adjusters would be "look back" adjusters that would look back to the previous two-year fee cycle, and attempt to recover revenue losses from that previous cycle through adjustments to the fee schedules for the new cycle. The revenue recaptured through these adjusters would be added to the O&M Costs in the fee calculation formula, so that this recaptured revenue would be re-allocated like other program operation costs to the fees charged on a per-manifest basis.

In support of this user fee regulation, EPA has developed a model that provides estimates over several years of assumed adoption rates for each manifest type, of call center costs, of electronic system O&M costs, of paper center costs, of system setup costs, of EPA Program Costs, of CROMERR implementation costs, of e-Manifest related system enhancement costs, and of the marginal costs of each manifest submission type. These cost categories are the major elements of program costs that our user fees will allocate to users through the development of per manifest unit charges or fees. As EPA develops more current information on actual program and system procurement costs incurred in developing and operating e-Manifest, these actual cost figures will be inserted in the fee formulas to develop our initial and subsequent fee schedules. However, an area of high sensitivity for the accuracy of e-Manifest fees that are determined on a per manifest basis is the accuracy of our projections about manifest usage. Particularly at the outset of the e-Manifest program, when we are capturing fee revenue based on unproven projections about how many total manifests and how many manifests of each type will be submitted, there is a risk of revenue instability for the program if these initial projections are not accurate.

To address this revenue stability risk, EPA is proposing an adjuster that would add to the revenues to be collected in a new fee cycle the revenues lost in the previous cycle on account of imprecision in the manifest usage numbers used as assumptions in the development of the previous fee amounts. This manifest number adjuster could be expressed as follows:

$\mathrm{Revenue\ Recapture}_{\mathrm{i}} = [(\mathrm{N}_{\mathrm{iYear1}} + \mathrm{N}_{\mathrm{iYear2}})_{\mathrm{Actual}}\ (\mathrm{N}_{\mathrm{iYear1}} + \mathrm{N}_{\mathrm{iYear2}})_{\mathrm{Est}}] \times [\mathrm{Fee}_{\mathrm{i(Ave\ of\ Yrs1and2)}}]$,

Where:

$\mathrm{Revenue\ Recapture}_{\mathrm{i}}$ is the amount of fee revenue to be recaptured for each type of manifest submission *"i";*

$(\mathrm{N}_{\mathrm{iYear1}} + \mathrm{N}_{\mathrm{iYear2}})_{\mathrm{Actual}}\ (\mathrm{N}_{\mathrm{iYear1}} + \mathrm{N}_{\mathrm{iYear2}})_{\mathrm{Est}}$ is the difference between actual manifest numbers submitted to the system for each manifest type during the previous two-year cycle and the numbers estimated when we developed the previous cycle's fee schedule; and

$\mathrm{Fee}_{\mathrm{i(Ave)}}$ is the average fee charged per manifest type over the previous two-year cycle.

By factoring the average fee times the difference between manifest numbers actually collected and the manifest numbers estimated, the proposed adjuster would return to the program the revenues that were lost to the program because our estimates of manifest usage did not match actual experience during the two-year fee cycle. Of course, it is possible that this adjuster could also result in a negative adjustment and reduce fee revenues in the next fee cycle, because the Agency underestimated manifest numbers in the prior cycle and actually generated surplus revenue from the greater numbers actually submitted. In either case, this look back adjuster would attempt to reconcile actual manifest usage with estimates used to develop fee schedules, so as to restore revenue balance. EPA requests comment on the inclusion of this adjuster in the proposed fee trajectory methodology *(If submitting comments on this issue, please use comment header: 6. Revenue Recovery Adjuster).*

A second revenue recapture adjuster we are proposing in this fee regulation is an adjuster aimed at recovering revenues lost on account of "uncollectable" manifests, that is, manifests for which the fees were not paid by the user when due or after fee collection activities. While EPA expects that most TSDFs will be current with their e-Manifest fee obligations, there is a possibility that despite the Agency's best efforts at collection of fees, and despite imposition of sanctions for non-payment, some manifest fee obligations may remain uncollectable. This revenue stability risk becomes more significant should fee payments occur predominantly as accounts receivable for reimbursement of services, rather than as advance payments for manifest related services. Therefore, in order for EPA to ensure that we are able to maintain a fee program that accomplishes full cost recovery, we are proposing an adjuster that would recover revenue lost from the previous two-year fee cycle on account of uncollectable fees.

This proposed adjuster for uncollectable fees would be expressed as follows:

$$\text{Uncollectable Revenue}_i = (N_{iYear1} + N_{iYear2})_{\text{UNCOLLECTABLE}} \times \text{Fee}_{i(Ave)}.$$

Where:

$(N_{iYear1} + N_{iYear2})_{\text{UNCOLLECTABLE}}$ is the sum of the number of uncollectable manifests of each type *"i"* over the previous two-year cycle, and

$\text{Fee}_{i(Ave)}$ is the average fee charged for each manifest type "i" during the previous two-year cycle.

4. Requests for Comment

EPA requests comment on the uncollectable manifest adjuster and the other adjusters and processes included in the proposed fee trajectory methodology. In particular, EPA requests comments responding to these questions:

- Do commenters generally agree with the trajectory proposal's emphasis on inflation, manifest usage estimates, and uncollectable manifests as the key sources of revenue instability that the adjusters should address? Are there other sources of revenue instability that are not addressed or could be addressed better by another methodology? *(If submitting comments on this issue, please use comment header: 6. Revenue Recovery Adjuster)*
- Do commenters agree that a two-year fee schedule revision cycle is desirable and practical for keeping pace with program cost changes? Do commenters agree that stability and avoidance of administrative burden are sound reasons for not adjusting fees annually or at some other frequency? Should fees be adjusted less frequently than every two years? *(If submitting comments on this issue, please use comment header: 7. Two-Year Fee Schedule Revision Cycle)*
- Do commenters agree that EPA's publication of fee schedule changes to the e-Manifest site 90 days prior to the effective date of fee schedule changes is sufficient notice to users of fee revisions? *(If submitting comments on this issue, please use comment header: 8. 90-Day Lead Time for Fee Schedule Changes)*
- Do commenters agree with the use of the CPI–U to measure inflationary impacts on program costs between the first and second year of each fee schedule? Is there a different index or another measure of cost changes that would more accurately reflect the changes in the labor and IT commodities and services costs that are more representative of our e-Manifest program costs than the "market basket" of consumer goods and services which BLS tracks with the CPI? *(If submitting comments on this issue, please use comment header: 5. Inflation Adjuster)*
- Do commenters agree that uncollectable manifests are appropriate for inclusion in a revenue adjuster to be paid for as fee increments by those users who are timely with their fee payments? How else can EPA ensure full cost recovery in the face of the instability posed by those who might become delinquent in their payments? *(If submitting comments on this issue, please use comment header: 6. Revenue Recovery Adjuster)*

E. What manifest transactions warrant fee premiums?

1. Background

The consideration of fee premiums touches upon several of the user fee design principles discussed previously. Specifically, the EPA must balance economic efficiencies of user fees (align users' fees with the costs of providing services) and the equity of the fee system (beneficiaries pay their fair share vs. ability to pay considerations), while assuring the adequacy of resulting revenues and minimizing the administrative burden of the fee system. Consequently, EPA prefers to keep the fee structure as simple as possible and balance the desirability of any fee premiums with the resulting complexity to the fee system and any resulting equity issues. Therefore, the EPA does not strongly favor adding fee premiums to the fee structure, unless there is a compelling basis for such premiums. The EPA believes fee premiums could be appropriate to recover e-Manifest system related costs where:

- The activity benefits a particular user to a significant extent;
- It is more equitable to charge that user for a service than to have the costs shared collectively;
- The cost of the premium service can be estimated accurately, and is not outweighed by collection costs; and
- The premium could deter undesirable activities or produce other favorable policy outcomes.

2. What fee premiums has EPA considered?

Based on the factors discussed earlier, EPA has considered the following as candidates for e-Manifest user fee premiums:

- Complex manifest transactions that incur greater cost (*e.g.*, rejections and discrepancies, consolidated loads, split loads),
- Submission to and return of stray documents from the paper center,
- Help desk encounters,
- Manifest Q/A and correction submissions, and
- An additional paper manifest use penalty.

a. *Complex Manifest Transactions.* Complex manifest transactions typically require use of more than one manifest to effectively track and closeout the original manifest. There are several variations of complex manifests, some of which[16] are detailed as possible candidates for fee premiums.

i. *Consolidated Shipments.* Consolidated shipments or split loads often require use of one or more manifests to effectively track and closeout the original manifest for the hazardous waste shipment. For instance, consolidated shipments require manifest users to link individual manifests from consolidated loads to a new manifest to present the overall description. The original manifests for such shipments must be linked and carried forward so that they may be closed out on receipt to the original generators. EPA has concluded that manifest activities for consolidated shipments do not necessitate fee premiums, because the multiple manifest nature of these transactions will itself provide for ample fees to be collected. Therefore, the EPA will not assess any additional fee premium for such shipments. Instead, EPA will assess a per manifest charge for each original manifest that is consolidated, plus an additional per manifest charge for the "cover" manifest that provides linkages to the original manifests and describes the total quantities of waste that are shipped.

ii. *Split or Breakdown Shipments.* This type of complex shipment occurs when a larger shipment of waste is divided into smaller shipments for transport, such as a rail car cargo that is off-loaded and reshipped on several truck shipment manifests. Thus, the larger shipment is considered to be "split" into or "broken down" into several smaller shipments that require individual, separate tracking. These split shipments may occur at either permitted facilities or at non-permitted RCRA 10-day transfer facilities.[17] EPA has concluded that a distinct fee premium is not needed for split or breakdown shipments. Again, because the tracking of these shipments will itself require the use of multiple manifests, the per manifest fees that result are ample to cover the costs of these complex tracking transactions. At a permitted facility, for example, the EPA would assess a fee for the original manifest when it is closed out at the permitted facility and also assess a separate per manifest fee for each resulting split load that is recorded on a new manifest. Further, if split shipments occur at a transfer facility, then the original manifest would be amended to indicate lesser quantities for a portion of the split load while another manifest(s) would be prepared for any remaining hazardous wastes. Thus, EPA would assess a per manifest charge for the amended original manifest and any additional manifests prepared for the split waste shipments when processed at a transfer facility. In such cases, no useful cost recovery purpose would be served by assessing any premium fee.

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[16] EPA did not include imports or exports, as we do not believe that completing the Item 16 data for international shipments introduced significant processing costs. Also, continuation sheets were not included as a candidate for a premium, as each sheet submitted as a continuation sheet would be charged a separate per manifest fee.

iii. Hazardous Waste Rejections or Regulated Residues. These complex manifest transactions occur when a designated facility receives a hazardous waste shipment but does not accept it, either because of restrictions in the facility's permit, capacity limitations, or other reasons. A partial rejection occurs if a designated facility accepts a portion of the shipment but rejects the remainder. Container residues, on the other hand, are hazardous wastes that remain in regulated amounts in containers such as drums and in tank vehicles used for transport, after most of the contents have been removed. The rejected hazardous wastes or regulated residues often are forwarded on new manifests that are linked to the original manifests. While the manifest tracking procedures for these shipment are complex, the EPA has determined that such transactions do not warrant a distinct premium fee, because EPA will assess a per manifest charge for the original manifest and a per manifest charge for the new manifest used to forward the full or partial shipment, or residue shipment.

In some instances, however, hazardous wastes rejections are forwarded on the original manifests and do not require use of a new manifest to forward the shipment or return it to the generator. EPA acknowledges that that in these limited cases, the original manifest may be used to forward or return full rejections, and that additional data elements will need to be supplied to track such shipments. EPA, however, has concluded for this proposal that a premium is not necessary for such transactions. While completion of Item 18b to track continued shipping of rejected wastes on the original form will necessitate additional data entries, the intent of Item 18b is to enable continued tracking without completing a new form. EPA believes that it would be counter-productive to charge a fee premium for continuing the original form. In addition, the EPA does not believe significant costs to EPA would result from processing the additional Item 18b entries.

iv. *Help Desk Encounters.* A help desk will be established to assist e-Manifest users with technical issues (*e.g.*, password, log-on, troubleshooting system connectivity issues) that arise in connection with their use of electronic manifests. Currently, the proposed Fee Formula discussed in Section III.C of the preamble includes help desk costs among the O&M costs that will be allocated generally to each manifest in the system. Help desk costs are a type of intervention for which there is some rationality in charging a per encounter fee to the users. This is particularly valid if it is found that certain users utilize the help desk excessively, thereby obtaining more than their "fair share" of services, and depriving others of help desk services. Despite the logic for charging a premium for help desk encounters, the EPA has determined at this time that the agency will not assess fee premiums for help desk costs. EPA intends to aggregate and apportion help desk costs as system O&M costs on a per manifest basis, as intended by the current fee calculation formula. Further, it is not clear whether a per encounter charge or a charge based on time utilized would be more equitable for any premium. Given the uncertainties of pricing and collecting these types of fees, the EPA believes it makes greater sense to spread help desk costs across all manifests by aggregating these costs as part of system O&M costs.

v. *Submission and Return of Stray Documents.* Based on consultations with the states, the EPA has discovered that states frequently (about 25% of incoming mail) receive extraneous documents that are forwarded to their tracking programs along with the required manifests for processing. These extraneous documents can include cover letters, Land Disposal Restriction (LDR) or other regulatory documents, and even miscellaneous flyers or other documents of no relevance to the manifest. While the EPA will not collect and process these documents in the e-Manifest system, the agency has some obligation to return such stray documents to their senders. Therefore, the Agency intends to return stray documents (other than cover letters) to the senders without processing their content and initially retain the envelopes to enable their return. The effort to sort and return these documents by mail to their senders will introduce costs that EPA believes should be recovered by a fee premium.

The EPA has made this determination for a couple of reasons. First, the EPA believes that the administrative costs to the agency would be significant for scanning or retaining envelopes, weeding out stray documents for return, and for the postage and clerical costs of returning these items to senders. Consequently, the EPA believes it would be more appropriate for the agency to assess a premium fee per stray document for such activities rather than apportion them across all manifests by aggregating these costs as part of system O&M costs. Second, the EPA believes a fee identified with these submissions should help to deter these submissions from occurring prospectively. Based on these two factors, the EPA is proposing to assess a premium fee per stray document to TSDF users who include extraneous documents in their submissions. The EPA also proposes to charge the fee at the time of paper manifest submission, so stray document premium fees could be added to the regular per manifest fee without difficulty. EPA requests comment on this proposed fee premium and on the point in the process for which the fee would be assessed *(If submitting comments on this issue, please use comment header: 9. Stray and Extraneous Documents).*

vi. *Manifest QA and Correction Submissions.* Based on consultations with several states with relatively robust manifest programs, EPA has learned approximately 10–20% of all manifests require corrections following submission to the states. Each state has its own method for conducting QA/QC with specific validation rules.

The most common issue found during state validation is illegible handwriting on the paper manifest, which seems to be the focal point of each state's QA/QC process. Some states will validate the handler IDs on the manifest against their database housing RCRA IDs. Other states attempt to identify typos or obvious errors with quantities, units of measure, and the handler information. Currently, if a manifest fails the state's QA/QC process, the state will notify the facility through official notice of correction, phone, or email of the needed correction along with any appropriate fines. In response, the facility will return the correction to the state, along with appropriate payments. Some states, such as California, have regulated processes for submitting signed correction letters with the corrected manifest. Other states may accept corrections verified by the handler via phone or email.

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[17] These types of shipments may also occur at intermodal facilities, a specific type of permitted or transfer facility at which waste materials are transferred between modes of transportation, *e.g.*, truck to rail.

Because EPA will collect both electronic manifests and paper manifests that continue in use, the e-Manifest program must assume some responsibility in the QA/QC manifest process. The states also expect that the EPA would run some type of federal QA/QC on manifests received, such as several basic validation rules. Following the EPA's QA/QC process, the states would then execute their state-specific QA/QC, as desired. Currently, the EPA is actively engaged in the development of the EPA system, and will establish the validation rules as part of system design. Prior to system launch, the EPA will request input from both industry and state stakeholders on the validation rules that would be used to identify manifest errors or share the validation rules with industry to help mitigate invalid manifests sent to EPA. Additionally, EPA could develop a validation engine that could be used by industry prior to submitting manifests.

Although EPA continues in its efforts for system planning and has not made final decisions regarding system design, the agency believes that that there should be some submission required by TSDF users to execute manifest corrections in the e-Manifest data system. In section III.V of this preamble, the Agency in fact proposes such a data correction submission and process for initiating manifest data corrections. The regulatory requirements for such correction submission are proposed at §§ 264.71(l) and 265.71(l) of this proposed rule. In addition, the EPA anticipates that it would not receive manifest corrections by postal mail but would instead receive all manifest correction related submissions electronically. The section III.V corrections process discussed later in this preamble and in the proposed regulations would require all such corrections to be submitted electronically by facilities.

The Agency believes that it should not incur significant administrative costs resulting from electronic manifest corrections. For electronic manifests, manifest edit checks and corrections would primarily occur prior to submission. The e-Manifest system would apply validation rules that could be executed automatically, and the system could alert the user of any errors. Thus, the EPA is proposing at this time that it will not assess fee premiums for processing corrections submissions for electronic manifests. Instead, QA/QC process costs for electronic manifests would be spread among the O&M costs that will be allocated generally to each manifest in the system.

While the EPA anticipates to also use some automated validation rules for all paper submission types (*i.e.*, XML, postal mail, image file), the automated QA/QC checks in some instances would occur after manifest submission, particularly for postal mail submissions. Thus, the EPA believes it is likely that significant administrative costs will result to EPA for processing corrections to paper submissions. Thus, the EPA believes the paper manifest corrections process would involve allocable system costs in responding to the correction submissions and re-keying data to correct previous entries made in the system. For that reason, the EPA is proposing to assess fee premiums for processing corrections submissions for paper manifests. The EPA requests comment on the proposed premium fee for processing a correction submission for paper manifests. In addition, the agency requests comment on when in the paper processing operation such premium fees should be assessed and collected *(If submitting comments on this issue, please use comment header: 10. Paper Manifest Corrections).*

vii. *Paper Use Penalty.* As discussed previously in Section III.C of the preamble, EPA is proposing to assign a differential fee to each manifest type (fully electronic, XML, image, paper) based on the varying labor costs to EPA to process data from each type into the system. In addition, should electronic manifest adoption lag (not achieve 75% use in four years), EPA is proposing to transition to a fee calculation formula that would allocate the paper center's operation and maintenance costs only to the paper manifest submission types. The cost-based approach of the proposed fee calculation formula for allocating system development and operating costs would already result in a higher differential fee assessed for paper manifest use than for electronic manifests. For example, under the proposed fee formula, the EPA now estimates paper manifests mailed to the system carry a per manifest charge about 88% greater than electronic manifests, while the paper manifests submitted as XML files would carry per manifest charges about 15% greater than fully electronic manifests. Thus, there is already a "premium" associated with paper manifest types, based solely on the formula's cost considerations. Moreover, the fee formula as proposed could become even more aggressive in elevating paper manifest fees in four years. Therefore, the EPA at this time does not believe that paper manifest usage necessitates a distinct or additional fee premium. Instead the EPA will defer any additional paper manifest premium until we see how actual implementation unfolds, and how the proposed fee formula itself operates as an incentive for greater electronic manifest use. The EPA requests comment on this proposal to rely on the fee formula itself to incentivize electronic manifest use, and not to include a distinct monetary penalty to discourage paper manifest use *(If submitting comments on this issue, please use comment header: 11. Incentivize Electronic Manifest Use).*

F. How will fee payments be made?

1. Background

The e-Manifest Act provides EPA the authority to collect fees for both electronic manifests and paper manifests that continue in use. The Act also granted EPA broad discretion to collect such fees in advance or as reimbursement services. Because Congress intended that the fees fully fund the e-Manifest system, EPA must institute a fee collection process that facilitates prompt payment of fees to ensure that the agency produces a stable revenue stream that will fully recover program developmental and operational costs. The EPA has considered several options to address how the e-Manifest system can most effectively and efficiently collect a large number of small value fees from TSDFs.

Specifically, EPA examined existing user programs within the agency to ascertain how these programs determine and revise their fee schedules, and to identify features or experiences in these programs that are takeaways for e-Manifest. For instance, the Toxics Substance Control Act (TSCA) authorizes fees for the Office of Chemical Safety and Pollution Prevention's (OCSPP's) lead abatement program. TSCA section 402(a)(3) authorizes fees for the accreditation of lead contractor training programs and certification of contractors engaged in activities that disturb lead-based paint during painting, renovation, remodeling, and repair of target housing. The original fees for the Lead-based Paint Activities program (the lead abatement program) were established in 1999.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) amendments passed by Congress in 2004 authorized a registration fee program to defray EPA's costs in reviewing and approving applications for specific pesticide registrations, amended registrations, and associated tolerance actions. The goal of this fee system is to create a more predictable evaluation process for affected pesticide decisions and to couple the collection of individual fees with specific decision review periods. The 2004 amendments are also known as the Pesticide Registration Improvement Act of 2003 (PRIA).

Section 217 of the Clean Air Act authorizes EPA to collect fees to recover Agency costs related to various activities (*i.e.* new vehicle or engine certifications, compliance monitoring, testing, etc.) incurred by the Office of Air and Radiation to administer its motor vehicle and engine compliance program (MVECP). Unlike the e-Manifest program, these programs receive additional appropriated funds, unrelated to the fees, to fund their program operations.

In addition, EPA consulted with the ETC, a trade association of commercial environmental firms that recycle, treat and dispose of industrial and hazardous waste. EPA conferred with ETC and its members in April 2015 to gather feedback on several of the fee collection issues and options discussed in this proposed rule, as its members would be primary users of the system and responsible for fee payments. Based on examination of existing fee programs and our consultations with ETC, EPA is considering several fee collection approaches for e-Manifest. Specifically, the Agency is considering pre-payment options based on projected or historic use, and an invoicing option under which users would be invoiced for fees based on their actual manifest usage during the previous billing cycle.

2. Payment Collection Options Under Consideration

a. *Pre-payments Based on Projected or Historic Use.* EPA examined two variations of advance payments. Under the first approach, TSDF users would pay in advance one lump sum annual fee for their projected manifest usage for an entire year. Under the second approach, TSDFs would make monthly recurring payments of an advance, fixed amount. There is precedent for advance payments of user fees in several of EPA's existing user fee programs. For example, the EPA's Office of Chemical Safety and Pollution Prevention and Office of Air and Radiation fee programs typically require advance payment prior to administering program services involving the review of applications for the various certifications and registrations administered by those programs. Under the first advance payment approach, TSDFs would pay a one-time annual fee for the entire year. TSDFs users would self-declare on a fee calculation form provided by EPA the number of manifests they expect to use based on the prior year's usage amounts. In addition, TSDFs would be expected to apportion manifest usage between electronic and paper manifests. EPA would charge and collect the lump sum fee based on these projections. EPA would either credit TSDFs for overpayment (if their actual usage was less than predicted by previous year's usage), or invoice facilities at the end of the year for a reconciliation payment for any actual underpayment, should actual usage exceed the estimates based on the previous year's usage.

Under the second pre-payment approach, EPA would charge TSDF users a fixed one-twelfth payment amounts on the first of each month, with the payments occurring as a pre-authorized Automated Clearinghouse (ACH) debit from a facility's commercial account. Like the lump sum advance payment option, TSDFs would be expected to self-declare the number of manifests they expect to use (based on prior year's usage) on a fee calculation form provided online by EPA. Facilities would also apportion their manifest usage between electronic manifests and paper manifests. In addition, the TSDFs would then divide their annual use projections by twelve to calculate the number of electronic and paper manifests projected per month. The appropriate monthly fee for electronic and paper manifests would be calculated, and from this calculation, the amount of the recurring monthly debit would be determined. The EPA would either credit TSDFs for overpayment (if their actual usage was less than predicted by previous year's usage), or invoice the facilities at the end of the year for a reconciliation payment for any underpayment, should actual usage exceed the estimates based on the previous year's usage.

b. *Invoicing Users Monthly for Actual Usage.* Under this approach, EPA would allow TSDF users to use manifests for a monthly period and then electronically invoice users for their actual manifest use over that billing month. Precedent exists at EPA for invoicing user fees, particularly in the Office of Pesticide Program's pesticide maintenance fee program, which invoices holders of active pesticide registration each year for the fees necessary to maintain their registrations.

The invoice for e-Manifest services would provide the following information:

- The TSDF's name, address and EPA ID Number;
- The total number of paper and electronic manifests transactions during the billing cycle;
- The manifest ID numbers and dates of service for each paper and electronic manifest used during the billing cycle;
- The billing cycle dates and invoice due date; and
- Any premium fees assessed during the billing cycle.

Unlike the aforementioned pre-pay options, the fees collected under this option in the first year and beyond are not based on projections from previous year's usage data, and are more precise in matching fee liability to a facility's actual manifest usage.

3. What methods of payment will be accepted?

TSDF users could use any payment method of their choice supported by the Department of the Treasury's *Pay.gov* [18] electronic payment collection services (or any applicable alternative or successor to Pay.gov developed by Treasury) as long as EPA's financial tracking systems are able to obtain and process the selected method of payment. Specifically, TSDFs would be expected to create payment accounts in Pay.gov and use one of the electronic payment methods currently supported by Pay.gov (*e.g.,* Automated Clearing House debits (ACH) from bank accounts, credit card payments, debit card payments, or PayPal or Dwolla). Because Pay.gov does not accept paper checks as an approved method of payment, EPA will not accept paper checks as payment for e-Manifest services.

EPA will either develop with e-Manifest system activity data an invoice based on manifest usage, or, the Agency will transmit usage information to Pay.gov, which will generate electronic bills for facilities using Pay.gov's e-Billing Service. Thus, either EPA or Pay.gov will send notifications regarding bills electronically to facilities, and *not* by postal mail. Regardless whether the e-Manifest system or Pay.gov sends the electronic bill notification, it will direct the TSDF users to go to the Pay.gov payment site to obtain their invoices, and to make their electronic payment using one of the aforementioned electronic payment methods.

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[18] The URL for Pay.gov is *http://www.pay.gov.*

In the case of advanced payments, TSDF users would have to authorize EPA to debit their commercial banking accounts automatically, for the amount of the one lump sum payment in advance for the entire year of projected manifest usage. EPA would then invoice the TSDF user for a second or reconciliation payment, or credit its account for overpayment, at the end of the year.

Similarly, under the monthly pre-payment approach, TSDF users would have to pre-authorize EPA to debit their commercial banking accounts for the amount payable to EPA through Pay.gov automatically so that the recurring one-twelfth fixed payment amount could be debited each month. EPA would invoice a final reconciliation payment to a TSDF user, or credit its account for overpayment, at the end of the year so that actual usage and fee obligations could be squared with the projected usage figures used to generate the advance fee payments.

4. Analysis of Payment Collection Options

EPA believes the pre-payment options as well as the monthly invoicing (reimbursement for services) option detailed peviously are authorized by statute, attractive and implementable for e-Manifest. However, each option has distinct characteristics that create risks or complexities for either EPA or industry stakeholders. As mentioned previously, the user fees are intended to provide the resources necessary to enable full funding of the e-Manifest program without the need for additional sources of funding.

On an administrative level, the pre-payment options are advantageous, as they allow for the collection of fees in advance of manifest services, which is administratively efficient on the front-end of the collection process. Such an approach could also provide a more stable revenue stream to cover system costs throughout the year, because of the nearly automatic, scheduled nature of the payments. This feature of the advanced payment option could also generate revenue more promptly for the initial year of system operations, facilitating EPA's ability to pay promptly its system related expenses, and also reduce the revenue stability risks posed by late or non-payments. However, the advance payment options would entail a greater administrative burden on the back-end of the collection process, because of the necessity to bill or invoice users at the end of the year for a reconciliation payment to square actual usage with estimated payments, or to process a credit in the case of overpayments. If users do not monitor their monthly payment records and track closely their actual manifest usage levels over the course of the year, disparities could develop that might produce unexpected billing amounts or possibly disputes at the end of the year. Finally, the monthly advance payment option has the advantage of harmonizing with the fixed, recurring electronic payment option supported by Treasury through Pay.gov. Currently, a recurring monthly payment to Pay.gov can occur as an ACH electronic payment, but only if the recurring monthly payment is for a fixed amount. EPA has aligned the advance monthly payment option, with its estimated monthly payment calculation, with the Pay.gov fixed recurring payment approach in order to take advantage of the nearly automatic nature of this specific electronic payment process.

Under the monthly invoicing (reimbursement) option, developing and executing invoices each month for several hundred facilities will entail more of an administrative burden on the front-end of the collections process, as EPA would need to process and each facility would receive and respond to 12 monthly invoices each year, rather than one reconciliation invoice at the end of each year. However, this option would eliminate the need for an annual reconciliation process at the end of the year, and any billing surprises that might arise if estimated payments and actual usage should diverge during the year. For users, the monthly invoicing option also avoids the necessity for TSDFs to complete their application at the start of each year that computes the amount of their monthly fixed payment amount. Finally, the monthly invoicing (reimbursement) option is advantageous for users, as it bills facilities based on their actual manifest usage and their actual involvement with electronic and paper manifests. This approach does not raise issues of imprecision in revenue collection, as it would bill facilities for exactly the amounts due from the actual numbers and types of manifests submitted. However, the flipside of this advantage is that it potentially creates some revenue vulnerability to the e-Manifest program if payments are not made regularly and on time. In that event, EPA would be forced to engage in collection activities and pursue sanctions against delinquent fee payers, entailing additional administrative costs to the Agency.

In consultations with the ETC, the Agency learned that ETC members generally favor the invoicing approach to the advance payment options. ETC members advised that there are variations in manifest usage from year to year, and billing for actual usage avoids the imprecision of trying to estimate fees based on a previous year's usage. ETC members did indicate that with respect to advance payments, that option could be more attractive if the advance payments were paid monthly rather than as a lump sum, and if there were incentives (*e.g.,* cost savings) tied to using this method.[19]

5. What is EPA proposing for its fee collection methods?

While EPA requests comment on both the advance monthly fixed payment approach and the monthly invoicing approach discussed previously, EPA is proposing to implement e-Manifest user fee payments, at least initially, by invoicing users monthly for their actual manifest usage activity in the prior month. EPA believes that there are advantages to billing monthly for actual usage, rather than for estimated usage from prior years' activities, and that this proposal will result in revenues matching system activity by users more precisely. The e-Manifest system will maintain records of manifest submission activity by users, and these records should provide a solid foundation for accurate billing and payment collections. However, the proposed approach will entail significant administrative effort by EPA to generate monthly invoices for all receiving facilities, and the potential for additional effort pursuing collection activities for any delinquent payments. These administrative efforts from invoicing facilities for monthly payments will result in additional operational costs that will need to be captured by the e-Manifest user fees. Despite the administrative effort and cost of invoicing monthly, the Agency believes that the monthly invoicing approach is a sound option for e-Manifest to implement initially.

While EPA is proposing the monthly invoicing option, we are also soliciting comment on the advance monthly payment option and an alternative option that combines these two approaches to payment collection.

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[19] In a preliminary analysis of potential cost savings performed by EPA's Research Triangle Park Finance Center, it was estimated that an advance monthly payment option might result in cost savings to EPA of several hundred thousand dollars, primarily because of lesser staffing (FTE) needs for the reduced invoicing effort associated with this option. If these cost savings were distributed across all manifests, user fees under the advance monthly payment option could be reduced by perhaps 10 to 20 cents per manifest.

Under this alternative or combined option, EPA would initially invoice TSDFs in the first year (or longer period) based on their actual monthly manifest usage. EPA understands that during the initial period of the system's operations, there might be too many uncertainties about manifest usage rates and the numbers of electronic vs. paper manifests in use to enable the advance payment method to be used with confidence. However, after more is known about facilities' actual manifest usage, these concerns could diminish. Therefore, EPA is requesting comment on an approach to fee collections where after conducting monthly invoicing for the initial year (or other period) of system operations, the Agency would then transition users to the use of payment plans enabling facilities to authorize a debit from a commercial account of a fixed, monthly advance ACH payment. This alternative is premised on the assumption that developing a baseline of manifest usage data from a year or more of invoicing activity would be helpful to projecting future manifest usage, and that such information would be sufficient to develop estimated monthly payments under an advance fixed payment method. As discussed earlier, this option would enable users to take advantage of a nearly automatic monthly electronic payment that could be scheduled and debited on the same day each month. Any deviation between projected and actual usage and fees would be addressed by the reconciliation process at the end of the year, resulting in an electronic bill for the amount owed or a credit.

6. Request for Comment

EPA requests comment on the proposed monthly invoicing approach and the alternative options *(If submitting comments on this issue, please use comment header: 12. Payment Options).* Do commenters agree that a monthly invoicing approach based on actual manifest usage is preferred to the other options, even though it may entail additional administrative effort and cost to implement? If there are concerns with the proposed approach, what are those concerns, and what payment option(s) would commenters prefer to the proposed approach?

With respect to the advance monthly fixed payment option, EPA requests comments on the perceived advantages and drawbacks of this option. Is there sufficient attractiveness to users in being able to make a nearly automatic monthly payment rather than having to respond to an invoice? Are the TSDF receiving facilities able and willing to authorize automatic ACH debits, *e.g.*, on the 1st of each month, from their commercial bank accounts to cover a fixed, monthly e-Manifest fee payment? Are the differential costs and savings from using advance monthly payments sufficient as an incentive to encourage their use? What other features or incentives could be included in this payment approach to make it more agreeable to users? What risks might this payment method pose to users if implemented?

With respect to the alternative or combined option, EPA requests comment on the merits of a transition to advance payments after an initial period of experience with monthly invoicing. The Agency asks also for comments whether the one year timeframe discussed previously would provide adequate time for TSDF users to develop a reliable baseline of manifest usage. Is there some other timeframe that would be more suitable to support the transition to advance monthly ACH payments? If comments should disclose significant support for advance monthly payments, and there are cost savings under this approach, should EPA promote or require the transition from invoicing to advance payments?

If EPA were to decide in the final rule to offer both an advance monthly payment option and an option with monthly invoicing or reimbursement for services, should EPA impose a differential fee or premium fee reflecting the different administrative cost of processing payments under the two approaches? The Agency solicits comment on these matters.

G. How will EPA address user fee disputes?

EPA recognizes that over the course of invoicing many facilities for their manifest fee obligations, errors may occasionally be made, and such errors may give rise to disputes concerning the amount of a user fee payment that is due in response to an invoice. In this regard, EPA emphasizes that the fee disputes relevant to this discussion are instances in which a facility questions the amount of an invoice because of an error in applying the fee formula to the facility's reported manifest activities. These disputes are *not* related to questions about the fee formula itself, or the underlying methodology EPA is proposing in this notice to determine the fee levels that apply to manifest related transactions. There are regulatory or judicial processes available for participating in or challenging such regulatory decisions. In addition, the Agency will conduct regular meetings with the e-Manifest Advisory Board to discuss any concerns with the fee setting process, the program's fee levels, and the financial reports of the system's revenue collection and expenditure activities.

Therefore, the issues that EPA considers to qualify as fee disputes for purposes of this discussion are those that arise when a facility's monthly invoice presents the facility with a fee amount that the facility challenges, because the invoice does not accurately describe the numbers of manifests submitted in the prior billing period, because the invoice does not accurately describe the types of manifests (paper types vs. electronic) submitted by the facility in the prior billing period, or, because the invoice appears to have made a mathematical error in generating the amount of fees due under the invoice.

EPA is not proposing a formal dispute resolution process governed by explicit and detailed regulatory provisions and processes. Rather, EPA intends to address e-Manifest fee disputes through a more informal process that EPA believes will be sufficient and less burdensome than a formal process.

EPA will post on the e-Manifest Web site a phone number and an email address where users may take up any questions they may have about the accuracy of a monthly user fee invoice. Whether a fee dispute claim is asserted over the phone, or by email, EPA expects the facility to provide sufficient information to support its claim that an invoice is in error. At a minimum, EPA expects that fee dispute claimants will provide the following information to the system's billing representatives:

- The claimant's name, the facility where the claimant is employed, the EPA Identification Number of the affected facility, the date and/or other information to identify the particular invoice that is the subject of the dispute, and a phone number or email address where the claimant can be contacted;
- Sufficient supporting information or calculations to identify the nature and amount of the fee dispute, including:
    - ○ Whether the error results from the types of manifests submitted being inaccurately described in the invoice,
    - ○ Whether the error results from the number of manifests submitted being inaccurately described in the invoice,
    - ○ Whether the error results from a mathematical error made in calculating the amount of the invoice, or
    - ○ Other information described by the claimant that explains why the invoiced amount is in error and what the fee amount invoiced should be if corrected.

EPA's system billing representatives will be expected to respond to all such billing disputes within ten days of receipt of a claim. In their response, the system's billing representative will indicate whether the claim is accepted or rejected, and if accepted, the response will indicate the amount of any fee adjustment that will be refunded or credited to the facility. If the claimant is not satisfied with the response of the EPA system's billing representative, the claimant may appeal its claim to the Office Director for the Office of Resource Conservation and Recovery.

EPA further emphasizes that the assertion of a fee dispute claim through this informal process does not excuse the requirement to make timely electronic payments of the invoiced fee amounts. Fee adjustments will be handled as refunds or credits of amounts paid, and the existence of a claim does not justify withholding payment of invoiced fees.

Finally, EPA is clarifying that once a claim has been addressed by the Agency under this informal dispute resolution and appeal process, the resolution that is reached after appeal to the Office Director concludes the matter and is non-reviewable by any other Agency official or in any other Agency proceeding.

EPA requests comment on the proposed informal dispute resolution process *(If submitting comments on this issue, please use comment header: 13. Fee Dispute Resolution).*

H. How does the Proposed Rule address fee sanctions?

1. Background

In this section of the proposed rule preamble, EPA discusses the sanctions that will be included in the e-Manifest fee program to induce manifest users to pay their fee obligations promptly. Particularly because e-Manifest fees may be collected as accounts receivable or as reimbursement for manifest services provided, it is important that the fee program include a set of credible and significant sanctions, so that delinquent payments will be discouraged. Otherwise, if delinquency or non-payments were to be commonplace,[20] the e-Manifest fee program would become vulnerable to revenue instability. Such instability would quickly jeopardize our ability to operate the e-Manifest system on a self-sustaining basis and to meet our user fee and financial obligations.

EPA finds relevant to this topic this additional federal user fee design guidance from the GAO that speaks to the need for fee payment sanctions as a necessary means to promote revenue stability in user fee programs.[21] In a section of this September 2013 report addressing remittance compliance, the GAO noted that penalties and other tools may be necessary to ensure timely fee remittance. GAO provided examples that included interest charges and denial of agency services.[22] In addition, in another report reviewing the U.S. Customs and Border Protection's (CBP's) international air passenger inspection program, the GAO observed that agencies should develop fee remittance sanctions that are "strong enough to deter unwanted behavior, but not so severe that they cannot practically be imposed."[23] Thus, drawing from the experience and guidance reported by the GAO, the challenge for the Agency in proposing e-Manifest user fee sanctions is to propose a mix of sanctions which are strong enough to ensure prompt payment of fees and revenue stability, while avoiding sanctions that are so severe that they are unlikely to be imposed and are thus perceived as not credible by manifest users.

2. What fee payment sanctions are being proposed by EPA?

For the purpose of ensuring timely payment of e-Manifest user fees, EPA is proposing a mix of financial, publication, and RCRA enforcement sanctions, and requesting comment on denial of services and the suspension of a facility's authority to receive wastes as other possible sanctions. Our aim in announcing these proposed sanctions is to develop a plausible mix of available sanctions that can be scaled to the degree of the offense caused by delinquency or non-payment. That is, we intend to develop sanctions that will ratchet up in their severity based on the degree and duration of the delinquency.

a. *Financial Claims Collection Penalties.* There are financial penalties that will apply to delinquent e-Manifest fee payments, under the authority included in existing federal claims collection statutes. Under 31 U.S.C. 3717, there are included interest and additional financial penalties that may be imposed on outstanding or delinquent debts arising under a claim owed by a person to the U.S. Government. Specifically, under 31 U.S.C. 3717(a)(1), agencies shall charge a minimum annual rate of interest equal to the average investment rate for Treasury tax and loan accounts for the 12-month period ending September 30th of each year, rounded to the nearest whole percent.[24] Under EPA's implementing Policy Number 2540–9–P2, accounts are considered delinquent when EPA does not receive payment by the due date specified on a bill or invoice. EPA expects and is proposing that the due date for e-Manifest fee payments would be 30 days from the date of invoicing. EPA is proposing that its e-Manifest fee sanctions will cite to this federal claims interest charge authority as the first tier of e-Manifest fee payment sanctions.

Second, under 31 U.S.C. 3717(e), authority is provided to agencies to collect an additional penalty charge of not more than 6% per year for failure to pay any part of a debt more than 90 days past due, as well as additional charge to cover the cost of processing delinquent claims. Under Policy Number 2540–9–P2, the EPA Finance Centers are responsible for issuing demand notices and conducting collection efforts for the Agency. The EPA Finance Centers will assess interest, handling, and penalty charges in 30 day increments for late payments, and will assess the 6% penalty with the 3rd demand letter or notice.[25]

EPA therefore proposes to include this additional 6% financial penalty charge for e-Manifest user fee debts that are more than 90 days past due. This would be the second tier of sanction authority under this proposal's set of fee payment sanctions, and would be implemented if the first tier of interest charges (assessed for fees 30 days past due) is not effective in causing a delinquent fee payer to make their payments current.

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[20] EPA expects that most RCRA TSDFs will in fact stay current with their e-Manifest fee obligations, and that delinquent or non-payment issues involving the user community will be relatively rare. Nevertheless, the Agency must be prudent and develop the necessary sanction tools that will provide it with the remedies to ensure the credibility of the e-Manifest fee program.

[21] U. S. Government Accountability Office, *Federal User Fees, Fee Design Options and Implications for Managing Revenue Instability,* pp. 28–29, September 2013.

[22] The examples cited in this section by GAO included denial of landing rights to airlines by Customs and Border Patrol (CBP) for non- or late payments of international air passenger inspection fees, and withholding Federal Communications Commission action on licensing proceedings involving delinquent licensees until arrangements made for payment of fees.

[23] GAO–07–1131, *Federal User Fees, Key Aspects of International Air Passenger Inspection Fees Should be Addressed Regardless of Whether Fees are Consolidated,* pp. 32–33, September 2007. GAO noted that the sanction that would deny landing rights to airlines for delinquent or non-paid fees had only been invoked 4 times in 20 years, suggesting that the sanction was perceived as too severe to be credible.

[24] This rate of interest is known as the Current Value of Funds Rate or CVFR, and is published prior to November 30th of each year by Treasury. At the time this notice was written in 2016, the rate was set at 1.00%.

[25] Under EPA policy, claims that are 150 days delinquent are referred to the Agency's Cincinnati Claims Officer, who can refer these debts to Treasury for further collection.

The Agency requests comment on the proposal to incorporate the financial interest and penalty charges set out in the previously referenced Federal claims collection statutes as the first and second tier of e-Manifest fee payment sanctions *(If submitting comments on this issue, please use comment header: 14. Financial Sanctions)*.

b. *Publication of a Delinquent Payor's List.* As the third tier of proposed fee payment sanctions, this action would include a list or registry of payors whose user fee payments remain delinquent even after the imposition of financial penalties and opportunities to cure the delinquency. Consistent with the policy of ratcheting sanctions, EPA proposes that facilities would become eligible for inclusion in the list of delinquent fee payors when the period of their delinquency extends to 120 days or greater. EPA believes that the negative publicity of being included on such a list would motivate payors to pay their fees promptly. Under this proposal, the List of Delinquent Payors would be maintained by EPA at its e-Manifest program Web site. The listing would indicate the name of the delinquent facility, its EPA ID Number, and the amount of the delinquency at the time of the listing. EPA would remove such facilities from the Delinquent Payor's List once it has been determined that the delinquency has been cured to the satisfaction of the Agency.

EPA requests comment on the inclusion of a Delinquent Payor's List among the sanctions that would be available to the Agency in the event of serious, continued delinquency of e-Manifest user fee payments *(If submitting comments on this issue, please use comment header: 15. Delinquent Payors List)*. Will the publicity resulting from the publication of a facility's delinquent payment status be an effective inducement to pay fees promptly? Is 120 days past due an appropriate period of time to demarcate the more serious fee delinquencies that merit this sanction? Are there other measures that should be included in this sanction that would cause it to be more effective as a possible sanction?

c. *RCRA Enforcement.* This proposed rule defines a fully completed manifest as one that has been submitted to the system either as an electronic manifest or in one of its paper submission types, and for which the assessed fees for submission and/or correction have been paid when due. EPA contends that if any manifests remain incomplete because of owed fees, then the facility may be in violation for failure to fully complete a manifest per proposed § 264.1315(d) and/or § 265.1315(d). EPA could enforce this violation under RCRA section 3008. The magnitude of fees unpaid, and the duration of their delinquency, are factors to be considered by enforcement officials in determining an enforcement response to this proposed regulatory violation. Any enforcement action taken would be separate from the fee collection process under 31 U.S.C. 3717, if the enforcement action results in the payment of a penalty rather than an order demanding the payment of fees owed to the government.

d. *Denial of Service and Other Sanctions.*

EPA also requests comment on the appropriateness and means by which EPA could deny access to e-Manifest services to those users who are exceedingly delinquent in their manifest fee payments *(If submitting comments on this issue, please use comment header: 16. Denial of Service Sanction).* In those instances in which the proposed financial, publication, and enforcement sanctions do not cure delinquent payments, is it appropriate at some point for the Agency to mitigate its revenue losses and cut off e-Manifest services to delinquent fee payors? Should denial of services extend to access to and submission of electronic manifests, to submission of paper manifests for processing by the system, or perhaps to both? Would the "exceedingly delinquent" payment behavior warranting such a severe sanction be determined by the dollar amount of the delinquency, or, by the length of time that payments remain delinquent? What dollar amounts and time periods for delinquencies would be appropriate conditions to impose on this type of sanction? Would a delinquency of 150 days, 180 days, or some other period of delinquency warrant the imposition of such a sanction? What types of notice and opportunities to cure should be provided prior to the imposition of a denial of service sanction? To what extent should the cutting off of e-Manifest services be combined and announced with the publication of the list of delinquent payors? The Agency requests comment on these matters.

Finally, EPA requests comment on other possible sanctions that might be considered as we develop our final user fee regulation *(If submitting comments on this issue, please use comment header: 17. Suspension of Facility Authorization)*. While the Agency has requested comment on a denial of e-Manifest services sanction, there are other sanctions that could be targeted more directly on a delinquent facility's operations as an authorized facility to receive hazardous wastes from off-site for management. At what point does the fact of significant, delinquent payments call into question the ability of the facility to continue as a viable commercial facility? Is there a rational connection between non-payment of manifest fees and a facility's being authorized to continue managing hazardous wastes? If this is a legitimate concern for this regulation, what administrative actions should EPA have available to mitigate the harm posed by such facilities continuing to receive hazardous wastes? Should EPA be able to suspend or withdraw such facilities' EPA ID numbers, so that they cannot be listed as designated facilities on others' manifests? Are there other means by which EPA could prevent such facilities from receiving wastes from others during the time that they remain egregiously delinquent in paying their e-Manifest user fees? What amount or period of delinquency would be the appropriate trigger for this type of sanction? If a facility wishes to dispute the invoices presented to it for payment, how should this be done in the context of the proposed sanctions? What administrative process (*i.e.*, notice, opportunity for hearing or cure) would need to be followed in administering such a sanction and any fee dispute process? EPA requests comment on these issues.

IV. Transporter Changes on the Manifest While En Route to the Designated Facility

A. What is the EPA proposing to change?

The EPA is proposing to modify its current regulations regarding transporter changes to shipment routing on the manifest. Specifically, the EPA is proposing to revise the manifest regulations at 40 CFR 263.21 by revising existing paragraphs (a) and (b) of that section so that transporters that act as agents of the generator can change en route the transporters designated on the manifest without prior, explicit approval from the generator, provided that their contract with the generator grants them explicit authority to make such routing changes as agent of the generator. The Agency is limiting this change to only allow the generator's agent to make changes on the generator's manifest and to only allow the generator's agent to change a transporter designated on the manifest, or to add a new transporter, without explicitly consulting with and obtaining prior approval from the generator each time a change occurs. This proposed regulation does not authorize any broader grant of agency authority to a transporter to act "on behalf of" generators with respect to other generator responsibilities. For example, a transporter cannot assume broad agency authority to substitute for the generator a different designated facility or alternate facility, or, for exports, the receiving facility outside the U.S designated by the generator, without consulting the generator. Nor could a transporter assume the responsibility to maintain a generator's manifest records and submit Exception Reports or resolve discrepancies on behalf of the generator. These are control and oversight functions that must remain with the generator.

In addition, this proposed regulatory change with respect to manifest changes during transport does not grant transporters (acting as agents for generators) the authority to correct the waste description data (*e.g.*, quantities, types, shipping names, waste codes) entered on the manifest. If such changes are necessary, then the transporter must consult with the generator and revise the manifest according to the generator's instructions. The EPA recognizes that data quality could be improved if transporters corrected errors during transport, but the agency believes that it is inappropriate for transporters to make such changes, because the generator has already certified with its signature that the contents of the shipment are "fully and accurately described." Transporters typically have had ample opportunity to verify the shipment data with the generator at the time of waste shipment pick-up, and thus should have corrected any errors in shipment data and descriptions prior to beginning transport. Further, EPA believes the reexamination of the container contents or shipping descriptions for accuracy of the shipment data should be performed by the designated facility, rather than transporters, as they are responsible by regulation to reconcile and report discrepancies related to a generator's shipment.

Finally, this proposed regulation also would not affect EPA's adoption of DOT's Hazardous Materials rules and policies in the March 2005 Manifest Revisions rule pertaining to "offerors" and pre-transportation functions for hazardous waste shipments. Unlike this proposed transporter regulation, the offeror language adopted in that rule applies only to pre-transport functions, such as preparing the manifest and shipment for the generator. The offeror authority does not apply to activities that occur during transport. Therefore, a generator's transport contractor can act on behalf of the generator in its capacity as offeror for pre-transport functions, and under this proposed regulation, the generator's transport contractor could modify the manifest on behalf of the generator during transportation, but only to modify the transporter designations pursuant to authority granted by the generator in its contract for this purpose. The transporter granted such contract authority must note in Item 14 of the manifest that it is authorized by the generator by contract to designate new or additional transporters as necessary.

B. Why is EPA proposing changes to 40 CFR 263.21(a) and (b)?

The EPA's current regulations regarding transporter changes to shipment routing assumes that the generator alone is responsible for identification of the complete chain of transportation and must, therefore, be consulted on and approve of all deviations from the routing plan (June 26, 1991, EPA letter from Sylvia Lowrance, OSW Office Director, to Brian Engel; RCRA Hotline Response # 13781, March 1, 1996). In accordance with the current manifest regulations at 40 CFR 263.21(a) and (b), transporters must deliver the entire quantity of hazardous waste accepted from a generator or transporter to the designated or alternate facility, the next designated transporter, or the designated export destination. Transporters who cannot deliver hazardous waste according to the generator's designation because emergency conditions prevent delivery must contact the generator to have them designate another facility or transporter. In each case, the delivery options are limited to the facilities or transporters designated on the generator's manifest unless an emergency condition prevents delivery to the designated facility or the next transporter. Thus, any changes to the routing plan, including changes to transporters designated on the manifest, require generator consultation and approval.

More recently, however, the transporter industry has argued that agency authority granted to transporters in contracts with their generator customers allows them to sign or act "on behalf of" and change the routing for the generator without specific consultation with the generator on each such change. The transportation industry contends that transportation efficiency often necessitates such changes, particularly at transfer facilities, and that the transporters and brokers have far more expertise than generators in arranging the logistics of hazardous waste shipments. Thus, from the perspective of the transporter industry, generators should be allowed to authorize transporters or brokers, by contract, to fulfill their generator responsibilities. According to the transporter industry, any transporter requirement to consult with the generator regarding routing changes is satisfied when a transporter, acting as agent of the generator, makes a transporter substitution or addition "on behalf of" the generator pursuant to such a contractual provision.

In addition, since the enactment of the e-Manifest Act in October 2012, the EPA has conducted several outreach efforts including face-to-face public meetings with industry stakeholders to ascertain and define current and future manifest workflow and system requirements to help facilitate e-Manifest adoption by current paper manifest users once the system is established and made available for use. Based on conversations with industry, the EPA has learned that generators rely very heavily on transporters or brokers to prepare the shipments and arrange shipment logistics on their behalf. In fact, many generators have contracts with transporters or brokers, which explicitly authorize them to:

- Identify potential transporter(s) to carry the waste shipment;
- Schedule the transportation;
- Assist the generator in completing the manifest;
- Ensure that manifest paperwork is properly handled and distributed during and after transportation;
- Obtain the generator's signature on the manifest or sign it as the offeror or on behalf of the generator; and
- Assist the generator in the DOT packaging, labeling, marking requirements.

Based on these factors, the EPA is proposing to change its regulations for several reasons. First, we recognize that the current regulation is inconsistent with what appears to be common industry practice regarding transporter changes to the routing of a shipment. The adoption of the 1980 final manifest regulation was based on prominent pre-RCRA incidents in which transporters and brokers often acted unscrupulously by diverting hazardous waste shipments to unauthorized sites involving "roadside" or "midnight" dumping. Thus, the 1980 regulation reflected EPA's intent at that time that the generator should bear primary responsibility for designating the routing of its waste on the manifest and for ensuring delivery of its waste to proper waste management facilities. Since that time, however, EPA further understands that brokers and transporters, not the hazardous waste generators, typically have the greater expertise in arranging the logistics and routing of hazardous waste shipments, and often must make certain transporter changes for logistical purposes when the shipment is already en route. Many hazardous waste generators, particularly small quantity generators, are quite willing to authorize brokers and transporters, through contracts, to act as their agents to fulfill generators' manifest requirements. Therefore, EPA is proposing to change its regulations related to transporter designations on the hazardous waste manifest during transport to align it more closely with the current industry practice that enables such changes to be made for transportation efficiency pursuant to contractual authority granted by the generator. Proposing this change in regulations would help to maintain a consistent national position on the manifest, particularly as the agency continues its efforts to establish the e-Manifest system. EPA regulations will now more closely reflect industry practice, and EPA can develop technical requirements for the e-Manifest system that are consistent with this proposal.

As a result of the proposal, changes in the description of transporters could be made: (1) To address an emergency; or (2) to accommodate transportation convenience or safety, *e.g.*, to allow more efficient transport from a transfer facility or enable the substitution of a transporter that is the sub-contractor of the designated transporter. In addition, as a result of this proposal, a change in transporter designation on the manifest could be effectuated by: (1) A consultation with the generator and generator approval of the change; or (2) a contractual provision authorizing the transporter to make such a change on behalf of the generator.

The regulatory changes proposed to effectuate transporter changes would recognize two distinct classes of transporters involved in such changes. Proposed § 263.21(b)(2) would apply to those transporters that lack contractual (agency) authority to act on behalf of the generator in making any transporter substitutions or additions. For such transporters, the proposed rule would continue the prior requirement to consult with the generator and obtain the generator's explicit approval of the proposed changes in the shipment's routing. Proposed § 263.21(b)(3) would apply to those transporters that have contractual authority to act as the agent of the generator with respect to adding or substituting other transporters while hazardous waste is in transport. The transporter making such changes must describe its contractual authorization in Item 14 of each manifest for which such a change is made. In addition, proposed § 263.21(b)(4) would clarify that any such grant of authority by a generator to a transporter to act on the generator's behalf in making changes to transporter designations does not affect the generator's liability or responsibility for compliance with the generator requirements of RCRA Subtitle C.

The existing provisions of § 263.21(a)(1), (2), and (4), addressing the conditions and process by which a generator must, under an emergency situation, be consulted on and approve any change to the designated facility, the alternate designated facility, or the place outside the United States designated by the generator for delivery of export shipments, are not altered by these proposed regulatory changes.

The EPA requests comment on its proposal *(If submitting comments on this issue, please use comment header: 18. Transporter Changes en Route).*

V. Manifest Data Corrections

A. Background

EPA is including in this action a proposal that would address the process and requirements by which facilities may make corrections to manifest data after the delivery of wastes to a facility under the manifest. At the time of delivery of wastes to a facility by a hazardous waste transporter, the facility owner or operator signs the manifest to certify to the receipt of the waste materials shipped under the manifest, or, to indicate discrepancies. While in many instances, this may be the last action taken by the receiving facility with respect to the waste shipment, the Agency is aware that there are other instances, perhaps involving as many as 20% of received shipments, where a correction must later be made with respect to the information shown on a manifest that was previously signed by the receiving facility.

In our discussions with industry and state stakeholders, we have heard that there are many instances where a waste handler identification number, or a hazardous waste code, is entered incorrectly or is interpreted incorrectly on account of legibility issues with the manifests. Such inaccuracies may not be caught by the waste handlers while the hazardous waste shipment is en route, but may be flagged by the receiving facility or by state regulators after delivery when they are keying the manifest data into their data systems. There should be a process to correct such data in e-Manifest, so that the appropriate generator sites, transporters, or receiving facilities are identified with the waste shipment in the companies' and agencies' data systems.

There are also a variety of reasons why waste quantity and type data entered on the manifest might require corrections after the delivery of hazardous wastes under the manifest. As we have noted previously, the use of the manifest in practice does not always result in precision in determining the types and quantities of wastes received, particularly at the time of delivery by the transporter. Generators and offerors may provide estimates of quantities of wastes shipped on the manifest, such as by indicating the shipment of three drums of a hazardous waste, and indicating the quantity shipped by using the container capacity as an estimate. Since the piece count (*i.e.*, number of containers) is accurate, the receiving facility could sign for the receipt of the containers, and there would not be a "significant discrepancy" within the meaning of the manifest regulations. However, several hours, days, or perhaps weeks after receipt, the facility may discover on closer inspection that the containers are only partially filled, and that the actual quantities of wastes received and managed differs from the generator's estimates. Similarly, bulk waste shipments may also be shipped under a manifest showing the quantities estimated by the generator or offeror. However, after receipt at the facility, it may be determined that the actual weight or quantity of bulk waste differs from the generator's or offeror's estimates, but not perhaps at the 10% level or greater that would trigger a "significant discrepancy" that would be required to be noted on the manifest. Even with respect to waste types,[26] there are instances where the types of wastes received may be found to differ from those indicated as shipped on the manifest by the generator or offeror, but either were not obvious at the time of receipt, or could not be determined until well after delivery when the containers were opened and waste analysis was performed on the container contents by the facility. These are just several examples illustrating how inaccuracies in data may arise in connection with the use of the manifest in tracking waste shipments and deliveries. However the inaccuracies arise, the e-Manifest system should provide an orderly process for effectuating changes to the data in the e-Manifest system post-delivery.

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[26] Instances for which differences in waste types or significant discrepancies in bulk waste receipts are not discovered until after delivery may require discrepancy reporting as well. For purposes of this discussion, we are focusing only on the post-delivery process for correcting the manifest data that are found to be inaccurate.

B. Why is manifest data correction important?

EPA considers the correction of manifest data to be an important system objective for a couple reasons: (1) Our state partners need accurate waste handler and waste receipt data in order to assess accurate waste management fees from the generators and receiving facilities that may be subject to such fees in the states; and (2) EPA needs quality waste receipt information from manifests in order to comply with the Manifest Act's mandate that EPA integrate e-Manifest with waste receipt reporting for the RCRA Biennial Report.

As regards the state interest in waste management revenues, EPA is aware that there are about 23 states that currently maintain state-specific manifest tracking programs. While these manifest tracking programs are useful for a variety of program management and compliance monitoring functions, many of these states depend on the data from hazardous waste manifests to support their assessment of taxes or fees related to waste management activities in their states. Several of these states impose taxes or fees on waste generators based on the amount of hazardous or other state-only regulated wastes that these entities generate in the states. Additional states with tracking programs impose such taxes or fees on their receiving facilities based on the amount of hazardous or other state-only regulated wastes that they receive for management at facilities within these states. In either case, the accuracy of these tax or fee assessments is dependent on the quality of the manifest data available to the state tracking programs. As e-Manifest will assume manifest collection functions now performed by these states, with EPA sharing the data collected by e-Manifest with these states, EPA believes it has a responsibility to the states and industry submitters to ensure that the system retains data of sufficient quality to support this function. The e-Manifest Act, in section 2(e)(3), states that a primary measure of a successful e-Manifest system is the development of a system that "meets the needs of the user community, including States that rely on data contained in manifests."

As regards the EPA's interest in the Biennial Report, EPA's efforts here are governed by section 2(e)(3)(iv) of the Act, which states that an additional measure of a successful e-Manifest effort is the development of a system that "provides the waste receipt data applicable to the biennial reports required by [RCRA] section 3002(a)(6)."

Manifests are by their nature records of off-site shipments of wastes and their receipts at authorized receiving facilities. Thus, manifest data are a good starting point for any effort to determine biennially what waste types and quantities were received at particular waste management facilities for disposition. The manifest collects for each off-site shipment the information on the quantities and types of wastes shipped, information identifying by site ID the particular generator and receiving facility, and the management method codes describing the intended management process for each waste. However, as suggested earlier, there are known issues surrounding the quality of the data entered on manifests, and these data quality issues touch upon data related to the accurate identification of generator sites and receiving facilities, and to the data related to the accuracy of waste type and quantity information. In scoping out the effort of integrating e-Manifest and the waste receipt reporting functions of the biennial report, EPA understands that a fundamental task that must first be accomplished is an orderly and consistent correction or clean-up process for the data entered on manifests. The objective of such manifest data correction must be to produce final data points that have been sufficiently vetted by the receiving facilities and other interested persons, so that the receiving facility would be satisfied with supplying the corrected manifest data as accurate and complete waste receipt data for biennial reporting purposes.

C. What is EPA proposing for manifest data corrections?

EPA is proposing that all manifest corrections will be submitted by facilities (TSDFs) electronically, regardless whether the data undergoing correction arises from a paper or electronic manifest. Only the receiving facilities would be permitted to make manifest data corrections in the e-Manifest system. Such corrections or changes could be made by the facility on its own initiative after conducting its own Quality Assurance (QA) activities, or, after notice from another waste handler, or notice from EPA or a state, of an apparent data quality issue with one or more manifests.

Under the approach proposed, facilities would be able to make corrections on-line directly via the e-Manifest system web-based application, or, the facilities could make corrections by uploading a correction submission using a submission format (e.g, XML file) prescribed by the Agency relating to one or a batch of previously submitted manifests. For those corrections made directly via the e-Manifest system web application, EPA would require the person responsible for the correction to execute a CROMERR-compliant electronic signature prior to completing their correction submission (*i.e.* clicking on the "submit" button). Likewise, for those corrections made through a correction submission relating to one or a batch of manifests, the submission would include and require the execution of a CROMERR-compliant electronic signature. The electronic signatures associated with manifest correction submissions would have the facility's representative certify, under penalty of law, that to the best of their knowledge and belief, the corrections that are included in the submission will cause the manifest data for each affected waste shipment and receipt to be true, accurate, and complete. In the case of batch corrections, only one certification need be executed for all the manifests and corrections involved in the batch submission.

The web application or the prescribed format for correction submissions would collect information from the facility that includes the Manifest Tracking Number and Date of Facility Receipt of the original manifest that is being corrected, the Item #s of the original manifest that are subject to correction, and for each Item # corrected, the data previously entered and the corresponding data as corrected by the correction submission. Items from the original manifest that are not subject to correction should be omitted from the correction submission, and will be presumed to be unchanged.

EPA is also proposing that all corrections to manifest data in e-Manifest must be completed by the date 90 days from the date of receipt by the facility of the waste shipments recorded on the original manifest. EPA previously determined in the One Year Rule of February, 2014, that the e-Manifest system would not disclose any manifest data to the public until 90 days after the date of receipt of manifested wastes, unless otherwise required by federal law. EPA further explained that the reason for delaying public disclosure for 90 days was the Agency's recognition that manifests are frequently corrected after waste receipts occur, and that EPA considered manifests to be "in process" and excluded from public disclosure until the 90-day window for dealing with discrepancies, exceptions, and other corrections had elapsed. Consistent with this determination, EPA is now proposing that this 90-day window would be the general deadline for correcting and thus finalizing manifest data. Thus, after the 90-day window of the One Year Rule has elapsed, this proposal would clarify that not only would EPA consider manifest data to be open to disclosure to the public, but also to be presumptively final and complete data for all regulatory purposes, including the compilation of waste receipt reports per the RCRA biennial report.

Finally, EPA believes that there should be an orderly process in place for completing all manifest data corrections within the proposed rule's 90-day window. EPA is proposing that all initial correction related notices, whether a voluntary correction submission by the TSDF, or a notice of a data error from another interested person (*i.e.*, other waste handler, EPA, or a state), must be provided no later than 60 days from the date of receipt of the wastes shipment under the affected manifest(s).

For corrections initiated by the facility, once the initial correction submission is entered by the TSDF, other waste handlers and appropriate states would be notified of the facility's corrections, and these persons would have 15 days to respond to the TSDF's corrections. If a facility's correction should elicit a response from one or more of these persons, then the facility must reconcile by day 90 any responses it receives by either altering the corrected data accordingly, or affirming the correction as initially made by the facility.

For corrections initiated on account of notice received by day 60 from another waste handler or from EPA or a state, the facility would have 15 days to respond to such notice by either entering a correction submission responding to the notice given, or, by affirming that the data originally entered is accurate and needs no correction. While other interested persons, may respond to the TSDF's initial response to the request for data corrections, the reconciliation of all such comments and responses must be concluded by the facility by day 90.

EPA previously indicated that it was proposing a user fee charge for the Q/A and data key entry effort that necessarily would accompany the submission of corrections to the system. Since the proposed approach would rely upon either a direct web application entry of corrections by the TSDF or an XML-based batch upload of corrected data, EPA believes that the per manifest fee that would be charged for XML-based manifest submissions is a fair approximation of the cost and therefore the appropriate fee to charge for manifest data corrections. Thus, this fee would be assessed for each manifest affected by a correction submission. EPA requests comments on the proposed approach for the submission of manifest data corrections to the system, and the fees to be assessed for such corrections *(If submitting comments on this issue, please use comment header: 19. Submission of Manifest Data Corrections)*.

VI. Mixed Paper and Electronic Manifest Transactions

A. Background

In the One Year Rule, EPA determined not to allow mixed paper and electronic manifest transactions. This decision was codified in 40 CFR 262.24(c), which addresses restrictions on the use of electronic manifests. The final regulation at § 262.24(c) states that a hazardous waste generator may prepare an electronic manifest for tracking waste shipments "only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the electronic manifest system."

In developing the One Year Rule, EPA initially considered allowing some types of mixed electronic and paper manifests, in the interest of maximizing the number of manifests that could be executed electronically, and thereby leveraging additional paperwork burden reductions. For example, EPA considered an option under which the generator and receiving TSDF might participate and transmit shipment data electronically, with perhaps intermediate transporters being allowed to continue to carry paper forms and execute ink signatures, if such transporters were not able to participate electronically. However, after fleshing out further what steps would be required to maintain a complete log of the custody chain and the entire record of the waste shipment using mixed manifests, EPA rejected the mixed manifest option. See 79 FR 7518 at 7549 (February 7, 2014). EPA explained this decision by observing that there would be too many manual processing steps required of receiving facilities to maintain a complete record of the shipment and sustain a mixed process, and that these additional manual steps (*i.e.*, noting the details of manual signatures on electronic manifests and merging the electronic and paper manifest data in the system) would likely overwhelm any paperwork burden reductions that might otherwise result from using electronic manifests. *Id.* We also noted that such mixed electronic and paper manifest transactions could pose significant enforcement challenges, as the enforceable record would consist of both paper and electronic components. *Id.*

B. Discussion

EPA is reevaluating whether there are instances in which a mixed electronic and paper manifest might be beneficial, particularly in the early years of e-Manifest implementation. Such a mixed or "hybrid" electronic manifest might be one means to overcome initially the challenges posed by implementing electronic manifesting at certain hazardous waste generator sites that lack the means to participate electronically.

For a variety of practical and administrative reasons, the use of electronic manifests by waste generators poses special challenges for EPA in implementing e-Manifest. First, many waste generators ship small quantities of wastes, and may ship such wastes infrequently. These smaller, occasional generators may operate from sites that lack a live network connection, thus necessitating support for off-line manifest completion. Moreover, these smaller, occasional generator sites may find password-based electronic signatures to be particularly challenging to execute, as they may not only be off-line at the sites where manifest signatures must be executed, but they may not be able to recall or locate their passwords or challenge question responses when they encounter e-Manifest infrequently. Second, as there are tens of thousands of generator sites within the RCRA universe, and each such site may employ several individuals with manifest responsibilities, there will be substantial administrative requirements related to registering generator personnel as authorized users and signatories, identity proofing each such generator signatory, supporting CROMERR copy of record processes that involve individual signatories in responding to post-signature notifications, and otherwise meeting the CROMERR electronic reporting standards as they relate to generators.

After consideration of these challenges at generator sites, EPA is reevaluating whether the current restriction on mixed electronic and paper manifests is an appropriate policy for e-Manifest. Our concern is that the current restriction allows no exceptions, and could unnecessarily rule out implementation flexibility at sites where a phase-in of electronic manifesting may be useful.

For example, EPA is exploring with the user community whether there may be merit to a mixed paper/electronic manifest option whereby some generators may choose to complete the initial generator copy of the manifest as a conventional paper manifest that would be signed in ink by the generator and the initial transporter. The transporter and receiving facility would, however, complete the remainder of the manifest transaction electronically. This ink signed copy could then be left with the generator as its initial generator copy, such as occurs under the existing manifest process. The transporter would deliver the waste to the next transporter or to the designated facility, and at delivery could present the electronic manifest on its portable device to the next handler for its electronic signature. Once the TSDF has signed electronically for waste receipts, the final electronic copy could then be distributed electronically through the e-Manifest system to the various waste handlers and to interested state agencies. Thus, with the exception of the initial copy that is signed in ink and left at the generator site, the remainder of the transaction would be executed electronically, and many of the desired efficiencies and burden reductions from electronic manifesting could still occur across the remainder of the manifest completion and distribution chain.

EPA believes the scenario discussed in this example could be particularly advantageous as an initial or interim phase of e-Manifest implementation. From our initial planning work on e-Manifest, the Agency believes that the implementation challenges posed at such generator sites may be among the most vexing issues to resolve, particularly with respect to conducting electronic manifesting off-line, to complying with the CROMERR requirements for user and signatory registrations, to conducting identity proofing of signatories, to complying with copy of record processes, and to executing valid electronic signatures. The suggested hybrid approach might circumvent these difficult compliance issues for generators by allowing such generators to execute and retain a paper copy bearing conventional ink signatures.

Therefore, EPA is proposing to amend § 262.24 by modifying the paragraph (c) restriction on mixed electronic and paper manifest transactions. The proposed modification would leave in place the general rule that an electronic manifest may be used only when it is known that all waste handlers may participate electronically, but would create an exception in proposed § 262.24(c)(1) to authorize the generator only to sign by hand and retain a paper copy of the manifest signed by hand by the initial transporter for its records. This proposal would thus excuse generators from participating electronically, while still allowing others in the manifest chain of custody to participate in the electronic manifest. EPA requests comment on this proposal *(If submitting comments on this issue, please use comment header: 20. Hybrid Approach).* Are there other scenarios that would benefit from flexibility on this issue, in addition to the example cited here of generator sites and the unique challenges these sites pose to a fully electronic process? Do commenters agree that the generator site scenario is a good candidate for a mixed or hybrid manifest approach? Can such an approach be implemented with simplicity, avoiding the concerns raised in the One Year Rule that mixed processes might entail additional manual processing steps that might defeat the benefits of electronic manifesting? If commenters believe there are other scenarios that might benefit from a mixed manifest approach, please explain such scenarios in detail, and discuss in your comments how the complete chain of custody could be documented and accessed easily, without the implementation complexities that gave rise to the ban of mixed manifest processes that we announced in the February 2014 regulation.

VII. The Projected Economic Impacts of the Electronic Manifest

A. Introduction

EPA estimated the costs and benefits of the proposed rule in a Regulatory Impact Analysis (RIA) which is available in the docket for this action. The RIA estimates costs and costs savings attributable to electronic manifests. Cost savings are presented against estimated baseline costs of the existing RCRA hazardous waste paper manifest system. The RIA also qualitatively describes un-monetized benefits of electronic manifests.

B. Count of RCRA Hazardous Waste Manifests

The RIA estimates paper manifest system baseline costs and electronic manifest costs savings at the per-manifest level. Per-manifest costs and cost savings are then scaled up to arrive at national estimates of paper manifest costs and electronic manifest cost savings. Because costs and cost savings are estimated at the per-manifest level, the count of manifests used drives costs and cost savings estimates in the RIA analysis.

Because all RCRA manifests will be processed centrally by EPA, the RIA estimated the entire scope of manifest usage. While the federal RCRA manifest (EPA forms 8700–22 and 8700–22A) has been the sole manifest accompanying shipments of hazardous waste since the 2005 Uniform Hazardous Waste Manifest form rule, the manifest has two applications. The first is to accompany shipments of hazardous wastes listed in the federal RCRA regulations. The second is to accompany shipments of state-only regulated wastes listed in various state RCRA regulations. A total count of manifests which include both federal and state applications was estimated in the RIA. EPA estimated an average annual count of hazardous waste manifests used by extrapolating from data on the generation of hazardous waste, data on the number of shippers of hazardous waste, and by making assumptions about the likely shipping frequency of hazardous and state-only regulated wastes. EPA corroborated this estimate through consultations with companies that print and sell copies of the hazardous waste manifest. The average annual count of hazardous waste manifests used is estimated to be 3.2 million. EPA would appreciate any information to improve the accuracy of this estimate.

C. Baseline Cost of the Paper Manifest System

EPA estimated baseline costs for all aspects of the existing paper manifest system which will be affected by electronic manifests. EPA estimated six categories of costs accruing to: industrial users of paper manifests, state governments that collect paper manifests, and EPA. The six categories of costs are:

- Paper manifest costs accruing to industry for federal manifests,
- Paper manifest costs accruing to industry for state manifests,
- EPA burden to process paper manifests,
- State government burden to process paper manifests,
- Industry burden to comply with hazardous waste Biennial Report requirements, and
- State government burden to comply with hazardous waste Biennial Report requirements.

In total, discounting at 7% over six years, the annualized baseline costs of the paper manifest system are estimated to be $183 million. EPA would appreciate any information to improve the accuracy of this estimate *(If submitting comments on this issue, please use comment header: 21. RIA)*.

D. Costs Savings and Other Benefits of Electronic Manifests

EPA estimated both monetized cost savings and other, non-monetized, benefits of electronic manifests. Cost savings are the difference between the pre-rule cost of manifesting and the post-rule cost of manifesting. They are estimated to accrue to both industrial and state government users of electronic manifests. Over the six year period of analysis modeled in the RIA, the annualized post-rule costs of manifesting were estimated to be $149 million when discounting at 7%. Since the pre-rule cost of manifesting is estimated to be $183 million, annualized cost savings from electronic manifests are estimated to be $34 million.

EPA expects that electronic manifests will enhance many stakeholders' ability to track and extract data on waste shipments by storing and distributing this data in a central, accessible location. EPA has identified six stakeholder groups that may benefit from better access to manifest shipping data:

- Members of industry that use the manifest for tracking waste shipments should know the status of their shipments faster than under the current paper based system. They should also benefit from the increased legibility of electronic manifest records compared to current paper manifests.
- Federal and state government RCRA enforcement officials, who use manifest data in the course of their investigations of RCRA compliance should benefit from the centralized storage of manifest data and the greater accessibility of these data under e-Manifest.
- Emergency responders should benefit from increased access to data on the generation, shipment, and storage of hazardous wastes in the event that a spill or other accident involving hazardous waste occurs.
- Foreign governments of countries that ship hazardous waste to, or receive hazardous waste from, the U.S. should benefit from the greater availability of manifest data. They may desire this data for safety, security, and programmatic reasons similar to those of the U.S. federal and state governments.
- Research institutions from academia to industry may find novel uses for manifest data.
- Communities near RCRA facilities will have better information on the generation, shipment, treatment, storage, and disposal of hazardous waste near their communities.

EPA has not attempted to quantify the value of this benefit.

SUMMARY OF ESTIMATED COSTS AND COST SAVINGS

[Annualized and discounted at 7% over six years]

Pre-rule costs ($ million)	Post-rule costs ($ million)	Cost savings ($ million)
183	149	34

VIII. State Implementation

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer their own hazardous waste programs in lieu of the federal program within the state. Following authorization, EPA retains enforcement authority under section 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to the enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA) and of the Hazardous Waste Electronic Manifest Establishment Act, a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to administer the program and issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, with the adoption of RCRA section 3006(g), which was added by HSWA, new requirements and prohibitions imposed under the HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by section 3006(g) to implement HSWA-based requirements and prohibitions in authorized states until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

The e-Manifest Act contains similar authority to HSWA with respect to federal and state implementation responsibilities in RCRA authorized states. Section 2(g)(3) of the e-Manifest Act, entitled Administration, provides that EPA shall carry out regulations promulgated under the Act in each state unless the state program is fully authorized to carry out such regulations in lieu of EPA. Also, section 2(g)(2) of the Act provides that any regulation promulgated by EPA under the e-Manifest Act shall take effect in each state (under federal authority) on the same effective date that EPA specifies in its promulgating regulation. Thus, the result is that regulations promulgated by EPA under the e-Manifest Act, like HSWA-based regulations, are implemented and enforced by EPA until the states are authorized to carry them out.

Authorized states generally are required to modify their programs when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements. However, as EPA explained previously when adopting manifest form revisions to fully standardize the RCRA manifest, the hazardous waste manifest is not governed by these requirements. Rather, the RCRA manifest requires strict consistency in its implementation, so that any EPA changes to federal manifest requirements must be implemented consistently in the states, regardless whether the change might be considered more stringent or broader in scope than existing requirements. See 70 FR 10776 at 10810 (March 4, 2005).

The proposed e-Manifest user fee requirements in subpart FF of 40 CFR parts 264 and 265 would be promulgated under the authority of the e-Manifest Act. However, the user fees addressed in this proposed rule are a uniquely federal requirement that EPA, and not states, must administer. All e-Manifest system fees are to be paid only to EPA, to be deposited in the e-Manifest System Fund, from which EPA may spend such amounts that are appropriated by Congress to offset the system's development and operation costs. Therefore, states cannot be authorized to collect and administer these user fees in lieu of EPA.

Although states cannot receive authorization to administer the federal government's e-Manifest program user fees, state programs would still be required to adopt the user fee provisions of this proposed rule in order to maintain consistency with the federal program. When a state adopts the user fee provisions of this proposed rule (if finalized), the state must not replace federal or EPA references with state references or terms that would suggest the collection or implementation of these user fees by the state. Again, the user fee provisions of this proposed rule, if final, would take effect (under federal authority) in all states on the effective date announced in the final rule, and would be administered solely by EPA, and not by the states.

In addition, this proposed rule includes a conforming change to 40 CFR 271.12, that would clarify that authorized state programs must include requirements for hazardous waste management facilities to pay user fees to EPA to recover all costs related to the development and operation of an electronic hazardous waste manifest system (e-Manifest system).

Finally, EPA notes that several authorized state programs operate manifest tracking programs that collect manifest data from the manifests that arise in connection with waste generation or waste receipts at sites within their states. Several of these states assess their own fees to offset the costs of administering their state manifest tracking programs, or they may assess waste generation or management fees to support state programs, based on manifest data in their state tracking systems. It is likely that some state manifest tracking programs and related fees may continue for the foreseeable future. However, it is likely that in the future state tracking programs will obtain their manifest data from the e-Manifest system, rather than directly from regulated waste handlers. EPA emphasizes that the federal user fees that are the subject of this regulation are solely to offset EPA's costs in developing and operating the e-Manifest system. It is not the purpose of this regulation to suspend, reduce, or otherwise impact the existing state fees that support states' manifest tracking programs or the fees levied by state programs on waste generation or management. The e-Manifest system is intended to enhance overall efficiency. As such, state tracking programs will likely rely on the e-Manifest system to provide the manifest data to support their program management needs and their waste generation or management fee collections. EPA is not now in a position to predict what, if any, impact this federal user fee regulation may have on any such state fee collection programs.

IX. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it may raise novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket for this action. The EPA prepared an economic analysis of the potential costs and benefits associated with this action, which is available in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 0801.21. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

This implementation of the e-Manifest and this Fee Rule will impose new information collection requirements on the regulated community, although we expect that the net effect will be to significantly reduce the paperwork burden relative to the paper manifest system. Although the primary effect of the e-Manifest implementation will be to replace current paper-based information requirements with electronic-based requirements to submit or retain the same shipment information, there could be minor additions or changes to the information collection requirements, such as information that may be provided to establish user accounts and fee payment accounts, information submitted for identity management, as well as waste profile or other information that may be useful for the creation and submission of electronic manifests. Additionally, EPA did not update the information collection burden associated with the regulatory changes to the manifest system announced in the "One Year Rule." While EPA acknowledged that the adoption of e-Manifest will change the manner in which information will be collected and transmitted, the system was not currently available and consequently the "One Year Rule" did not change the information collected by the hazardous waste manifest, nor the scope of the wastes that are now subject to manifesting. EPA indicated that it would update the information collection burden and benefit estimates in this user fee rule.

Respondents/affected entities: Private waste handlers.

Respondent's obligation to respond: Mandatory (RCRA 3002(a)(5)).

Estimated number of respondents: 56,306.

Frequency of response: On occasion.

Total estimated burden: 2,002,841 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $91,674,429, includes $25,554,370 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule *(If submitting comments on this issue, please use comment header: 22. ICR).* You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *oira_submissions@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than August 25, 2016. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Analysis

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule.

The Regulatory Impact Analysis (RIA) conducted for this rulemaking found that the e-Manifest rule would significantly reduce the compliance burden associated with manifesting shipments of hazardous waste. The RIA estimates that in the initial six years after the e-Manifest system is operational, annualized savings from manifest related burden reduction would equal approximately $34 million per year when discounted at 7%. The RIA estimates that these savings would accrue to firms of all sizes that adopt electronic manifests as well as to firms that adopt one of the two paper manifest submission options other than postal mail submissions. The RIA estimates that the vast majority of manifests will be submitted electronically and therefore concludes that savings from e-Manifest will accrue to small and large firms. Because the e-Manifest rule will relieve regulatory burden for small firms, the RIA concludes it will not have a significant adverse economic impact on a substantial number of small entities.

As a precaution, the RIA also estimates the impacts of the e-Manifest rule under the unlikely hypothetical scenario in which small firms do not adopt e-Manifest but instead continue to submit paper manifests via postal mail. As a consequence, these firms might not realize any savings from the e-Manifest rule but could instead face increasing costs from e-Manifest fees. Even under these unlikely and highly conservative assumptions, the RIA finds that the rule will not have a significant adverse economic impact on a substantial number of small entities. The RIA, in particular Section 7.2, describes how EPA assembled a universe of small entities, how EPA estimated the hypothetical impacts of the e-Manifest rule under these conservative assumptions, and the criteria EPA used in this instance to determine significant adverse economic impacts on a substantial number of small entities. The RIA is available in the docket for this rulemaking.

D. Unfunded Mandates Reform Act

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not impose any new requirements on tribal officials nor will it impose substantial direct compliance costs on them. This action will not create a mandate for tribal governments, *i.e.*, there are no authorized tribal programs that will require revision and reauthorization on account of the e-Manifest system and regulatory program requirements. Nor do we believe that the e-Manifest system and this Fee Rule will impose any enforceable duties on these entities. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action is proposing user fees for use of an electronic system, which will not have a significant effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have potential disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994), because it does not affect what facilities, materials, or activities are subject to RCRA. Thus, this action does not affect the level of protection provided to human health or the environment. When implemented, the e-Manifest system could improve access for minority, low-income or indigenous populations and communities to information on waste movements to, from, or through neighborhoods where these populations live and work. Thus, the system could only have beneficial effects on such populations and communities.

List of Subjects

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Electronic reporting requirements, Hazardous materials transportation, Hazardous waste.

40 CFR Part 264

Environmental protection, Electronic reporting requirements, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements, Security measures, User fees.

40 CFR Part 265

Environmental protection, Electronic reporting requirements, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements, User fees.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Electronic reporting requirements, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

Dated: June 27, 2016.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR parts 262, 263, 264 and 265, and 271 as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 1. The authority citation for Part 262 is revised to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, 6938 and 6939g.

■ 2. Section 262.24 is amended by revising paragraphs (c) and (g) to read as follows:

§ 262.24 Use of the electronic manifest.

* * * * *

(c) *Restriction on use of electronic manifests.* A generator may use an electronic manifest for the tracking of waste shipments involving any RCRA hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the use of the electronic manifest, except that:

(1) A generator may sign by hand and retain a paper copy of the manifest signed by hand by the initial transporter, in lieu of executing the generator copy electronically, thereby enabling the transporter and subsequent waste handlers to execute the remainder of the manifest copies electronically.

(2) [Reserved]

* * * * *

(g) *Imposition of user fee.* A generator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

■ 3. The authority citation for Part 263 is revised to read as follows:

Authority: 42 U.S.C 6906, 6912, 6922–6925, 6937, 6938, and 6939g.

■ 4. Section 263.20 is amended by revising paragraph (a)(8) to read as follows:

§ 263.20 The manifest system.

* * * * *

(a)(8) *Imposition of user fee for electronic manifest use.* A transporter who is a user of the electronic manifest may be assessed a user fee by EPA for the origination or processing of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system.

* * * * *

■ 5. Revise § 263.21 to read as follows:

§ 263.21 Compliance with the manifest.

(a) Except as provided in paragraph (b) of this section, the transporter must deliver the entire quantity of hazardous waste which he or she has accepted from a generator or a transporter to:

(1) The designated facility listed on the manifest; or

(2) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) The next designated transporter; or

(4) The place outside the United States designated by the generator.

(b)(1) If the hazardous waste cannot be delivered in accordance with paragraph (a)(1), (a)(2), or (a)(4) of this section because of an emergency condition other than rejection of the waste by the designated facility or alternate designated facility, then the transporter must contact the generator for further instructions and must revise the manifest according to the generator's instructions.

(2) *Transporters without agency authority.* If the hazardous waste is not delivered to the next designated transporter in accordance with paragraph (a)(3) of this section, and the current transporter is without contractual authorization from the generator to act as the generator's agent with respect to transporter additions or substitutions, then the current transporter must contact the generator for further instructions prior to making any revisions to the transporter designations on the manifest. The current transporter may thereafter make such revisions if:

(i) The hazardous waste is not delivered in accordance with paragraph (a)(3) of this section because of an emergency condition; or

(ii) The current transporter proposes to change the transporter(s) designated on the manifest by the generator, or to add a new transporter during transportation, to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety; and

(iii) The generator authorizes the revision.

(3) *Transporters with agency authority.* If the hazardous waste is not delivered to the next designated transporter in accordance with paragraph (a)(3) of this section, and the current transporter has authorization from the generator to act as the generator's agent, then the current transporter may change the transporter(s) designated on the manifest, or add a new transporter, during transportation without the generator's prior, explicit approval, provided that:

(i) The current transporter is authorized by a contractual provision that provides explicit authority for the transport to make such changes on behalf of the generator,

(ii) The transporter describes such authorization in Item 14 of each manifest for which such a change is made, and

(iii) The change in designated transporters is necessary to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety.

(4) The grant by a generator of authority to a transporter to act as the agent of the generator with respect to changes to transporter designations under paragraph (b)(3) of this section does not affect the generator's liability or responsibility for complying with any applicable requirement under this chapter.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 6. The authority citation for Part 264 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6939g.

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 7. Section 264.71 is amended by revising paragraph (j) and adding a paragraph (l) to read as follows:

§ 264.71 Use of manifest system.

* * * * *

(j) *Imposition of user fee for electronic manifest use.* An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under § 264.71(a)(2)(v) of this part. EPA shall maintain and update from time-to-time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system.

* * * * *

(l) *Post-receipt manifest data corrections.* After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections must be completed by the owners or operators of the receiving facilities within 90 days of the receipt of manifested shipments of hazardous waste.

(1) Receiving facilities must enter all corrections to manifest data by

electronic submission, either by directly entering corrected data to a web based service provided in e-Manifest for such corrections, or by an upload of a data file (*e.g.,* XML file) containing data corrections relating to one or more previously submitted manifests.

(2) Each correction submission must include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The Item Number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each Item Number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(3) Each correction submission shall include a statement that the facility representative submitting the corrections certifies, under penalty of law, that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete.

(i) The certification statement must be executed with a valid electronic signature.

(ii) A batch upload of data corrections may be submitted under one certification statement.

(4) Manifest data corrections initiated by the receiving facility should be initiated by a facility's correction submission no later than 60 days from the date receipt of the hazardous wastes under the affected manifest(s).

(i) Upon receipt of the facility's correction submission, other interested persons (other waste handlers on the manifests, EPA, appropriate states) will be provided electronic notice of the facility's proposed corrections.

(ii) Other interested persons shall have 15 days to respond to the facility's proposed corrections with any comments or suggested changes.

(iii) By the date 90 days after receipt of the original manifests for which data are being corrected, the facility must reconcile any comments received from other interested persons, and must either alter its correction submission accordingly, or affirm the accuracy of the initial correction submission.

(5) Manifest data corrections may be initiated by notice of a suspected data error provided to the facility by other interested persons.

(i) Any notice of a suspected data error from an interested person must be provided to the facility by email or other form of electronic notice no later than the date 60 days after receipt of the original manifests affected by the suspected errors.

(ii) If timely notice of suspected data errors is provided to the facility, the facility shall have 15 days to provide its response to such notice by either submitting a correction submission with responsive data corrections, or by affirming that the data originally submitted are accurate and need no correction.

(iii) The facility must finally reconcile all notices or comments regarding data errors and corrections by the date 90 days after receipt of the affected hazardous waste manifests.

■ 8. Subpart FF is added to read as follows:

Subpart FF—Fees for the Electronic Hazardous Waste Manifest Program

Sec.
264.1300 Applicability.
264.1310 Definitions applicable to this subpart.
264.1311 Manifest transactions subject to fees.
264.1312 User fee calculation methodology.
264.1313 User fee revisions.
264.1314 How to make user fee payments.
264.1315 Sanctions for delinquent payments.

§ 264.1300 Applicability.

(a) This subpart prescribes:

(1) The methodology by which EPA will determine the user fees which owners or operators of facilities must pay for activities and manifest related services provided by EPA through the development and operation of the electronic hazardous waste manifest system (e-Manifest system); and

(2) The process by which EPA will revise e-Manifest system fees and provide notice of the fee schedule revisions to owners or operators of facilities.

(b) The fees determined under this subpart apply to owners or operators of facilities whose activities receiving, rejecting, or managing federally- or state-regulated hazardous wastes or other materials bring them within the definition of "user of the electronic manifest system" under § 260.10 of this chapter.

§ 264.1310 Definitions applicable to this subpart.

The following definitions apply to this subpart:

Consumer Price Index means the consumer price index for all U.S. cities using the "U.S. city average" area, "all items" and "not seasonally adjusted" numbers calculated by the Bureau of Labor Statistics in the Department of Labor.

CROMERR Costs are the sub-category of Operations and Maintenance costs that are expended by EPA in implementing electronic signature, user registration, identity proofing, and copy of record solutions that meet EPA's electronic reporting regulations as set forth in the Cross Media Electronic Reporting Rule (CROMERR) as codified at 40 CFR part 3.

Electronic Manifest Submissions means manifests that are initiated electronically using the electronic format supported by the e-Manifest system, and that are signed electronically and submitted electronically to the e-Manifest system by facility owners or operators to indicate the receipt or rejection of the wastes identified on the electronic manifest.

EPA Program Costs mean the Agency's intramural and non-information technology extramural costs expended in the design, development and operations of the e-Manifest system, as well as in regulatory development activities supporting e-Manifest, in conducting its capital planning, project management, oversight and outreach activities related to e-Manifest, in conducting economic analyses supporting e-Manifest, and in establishing the System Advisory Board to advise EPA on the system. Depending on the date on which EPA Program Costs are incurred, these costs may be further classified as either system setup costs or operations and maintenance costs.

Help Desk Costs mean the costs incurred by EPA or its contractors to operate the e-Manifest Help Desk, which EPA will establish to provide e-Manifest system users with technical assistance and related support activities.

Indirect Costs mean costs not captured as Marginal Costs, System Setup Costs, or Operations and Maintenance Costs, but that are necessary to capture because of their enabling and supporting nature, and to ensure full cost recovery. Indirect costs include, but are not limited to, such cost items as physical overhead, maintenance, utilities, and rents on land, buildings, or equipment. Indirect costs also include the EPA costs incurred from the participation of EPA offices and upper management personnel outside of the lead program office responsible for implementing the e-Manifest program.

Manifest Submission Type means the type of manifest submitted to the e-Manifest system for processing, and includes electronic manifest submissions and paper manifest submissions.

Marginal Labor Costs mean the human labor costs incurred by staff operating the paper manifest processing center in conducting data key entry, QA, scanning, copying, and other manual or clerical functions necessary to process the data from paper manifest submissions into the e-Manifest system's data repository.

Operations and Maintenance Costs mean all system related costs incurred by EPA or its contractors after the activation of the e-Manifest system. Operations and Maintenance Costs include the costs of operating the electronic manifest information technology system and data repository, CROMERR Costs, Help Desk Costs, EPA Program Costs incurred after e-Manifest system activation, and the costs of operating the paper manifest processing center, other than the paper processing center's Marginal Labor Costs.

Paper Manifest Submissions mean submissions to the paper processing center of the e-Manifest system by facility owners or operators, of the data from the designated facility copy of a paper manifest, EPA Form 8700–22, or a paper Continuation Sheet, EPA Form 8700–22A. Such submissions may be made by mailing the paper manifests or continuation sheets, by submitting image files from paper manifests or continuation sheets, or by submitting both an image file and data file (*e.g.*, XML) in a format supported by the e-Manifest system's paper processing center.

System Setup Costs mean all system related costs, intramural or extramural, incurred by EPA prior to the activation of the e-Manifest system. Components of System Setup Costs include the procurement costs from procuring the development and testing of the e-Manifest system, and the EPA Program Costs incurred prior to e-Manifest system activation.

§ 264.1311 Manifest transactions subject to fees.

(a) Fees shall be assessed on a per manifest basis for the following manifest submission transactions:

(1) The submission of each electronic manifest that is electronically signed and submitted to the e-Manifest system by the owners or operators of receiving or designated facilities; and

(2) The submission of each paper manifest submission to the paper processing center by owners or operators of receiving or designated facilities;

(b) Supplemental fees shall be assessed on a per transaction basis for the following manifest related transactions:

(1) The sorting, recovery, and return to sender of extraneous documents or other information submitted to the paper processing center with mailed copies of paper manifests by owners or operators of receiving or designated facilities, and

(2) The processing of manifest data correction submissions by owners or operators of receiving or designated facilities, for the data entry, QA, and other activities necessary to process corrected data into the e-Manifest system.

§ 264.1312 User fee calculation methodology.

(a) The fee calculation formula or methodology that EPA will use initially to determine per manifest fees is as follows:

$$Fee_i = \left(Marginal\ Cost_i + \frac{System\ Setup\ Cost}{Years \times N_t} + \frac{O\&M\ Cost}{N_t}\right) \times (1 + Indirect\ Cost\ Factor)$$

System Setup Cost = Procurement Cost + EPA Program Cost

O&M Cost = Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services

Where:

Fee_i represents the per manifest fee for each manifest submission type "i,"

N_t refers to the total number of manifests completed in a year, and

(b) If after 4 years of system operations, electronic manifest usage does not equal or exceed 75% of total manifest usage, EPA will transition to the following formula or methodology to determine per manifest fees:

$$Fee_i = \left(Marginal\ Cost_i + \frac{System\ Setup\ Cost}{Years \times N_t} + \frac{O\&M_i\ Cost}{N_i}\right) \times (1 + Indirect\ Cost\ Factor)$$

System Setup Cost = Procurement Cost + EPA Program Cost

$O\&M_{fully\ electronic}$Cost = Electronic System O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services

$O\&M_{all\ other}$Cost = Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services

N_i refers to the total number of one of the four manifest submission types "*i*" completed in a year.

$O\&M_i$ Cost refers to the differential O&M Cost for each manifest submission type "*i*."

§ 264.1313 User fee revisions.

(a) EPA will revise the fee schedules for e-Manifest submissions and related activities at two-year intervals, by utilizing the applicable fee calculation formula prescribed in § 264.1312 and the most recent program cost and manifest usage numbers based on fiscal year data for the fiscal year beginning on October 1 of odd numbered years.

(1) The fee schedules will be published to users through the e-Manifest program Web site by March 1 of each even numbered year, and will cover the two-year period beginning on June 1 of that year and ending on May 31 of the next even numbered year two years later.

(b) *Inflation adjuster.* The second year fee schedule shall be adjusted for inflation by using the following adjustment formula:

$Feei_{Year\ 2} = Feei_{Year1} \times (CPI_{Year2-2}/CPI_{Year2-1})$,

Where

$Feei_{Year2}$ is the Fee for each type of manifest submission "*i*" in Year 2 of the fee cycle,

$Feei_{Year1}$ is the Fee for each type of manifest submission "*i*" in Year 1 of the fee cycle, and

$CPI_{Year2-2}/CPI_{Year2-1}$ is the ratio of the CPI published for the year two years prior to Year 2 to the CPI for the year one year prior to Year 2 of the cycle.

(c) *Revenue recovery adjusters.* The fee schedules published at two-year intervals under this section shall include adjustments to recapture revenue lost in the previous two-year fee cycle on account of imprecise estimates of manifest usage and of uncollectable manifests.

(1) The adjustment for imprecise estimates of manifest usage shall be calculated using the following adjustment formula to calculate a revenue recapture amount which will be added to O&M Costs in the fee calculation formula of § 264.1312:

$\text{Revenue Recapture}_i = (N_{iYear1} + N_{iYear2})_{Actual} - (N_{iYear1} + N_{iYear2})_{Est} \times \text{Fee}_{i(Ave)}$,

Where

$\text{Revenue Recapture}^i$ is the amount of fee revenue recaptured for each type of manifest submission "*i*,"

$(N_{iYear1} + N_{iYear2})_{Actual} - (N_{iYear1} + N_{iYear2})_{Est}$ is the difference between actual manifest numbers submitted to the system for each manifest type during the previous 2-year cycle, and the numbers estimated when we developed the previous cycle's fee schedule, and

$\text{Fee}_{i(Ave)}$ is the average fee charged per manifest type over the previous two-year cycle.

(2) The adjustment for uncollectable manifests shall be calculated using the following adjustment formula to calculate an Uncollectable Revenue recovery amount, which will be added to O&M Costs in the fee calculation formula of § 264.1312:

$\text{Uncollectable Revenue}_i = (N_{iYear1} + N_{iYear2})_{UNCOLLECTABLE} \times \text{Fee}_{i(Ave)}$,

Where

$(N_{iYear1} + N_{iYear2})_{UNCOLLECTABLE}$ is the sum of the number of uncollectable manifests of each type "*i*" over the previous two-year cycle, and

$\text{Fee}_{i(Ave)}$ is the average fee charged for each manifest type "i" during the previous cycle.

§ 264.1314 How to make user fee payments.

(a) All fees required by this subpart shall be paid by the owners or operators of the receiving or designated facility (the facility) in response to an electronic invoice or bill identifying manifest-related services provided the user during the previous month and identifying the fees owed for the enumerated services.

(b) All fees required by this subpart shall be paid to EPA by the facility electronically in U.S. dollars, using one of the electronic payment methods supported by the Department of the Treasury's Pay.gov online electronic payment service, or any applicable additional or successor online electronic payment service offered by the Department of Treasury.

(c) All fees for which payments are owed in response to an electronic invoice or bill must be paid within 30 days of the date of the invoice or bill.

§ 264.1315 Sanctions for delinquent payments.

(a) *Interest.* In accordance with 31 U.S.C. 3717(a)(1), delinquent e-Manifest user fee accounts shall be charged a minimum annual rate of interest equal to the average investment rate for Treasury tax and loan accounts (Current Value of Funds Rate or CVFR) for the 12-month period ending September 30th of each year, rounded to the nearest whole percent.

(1) E-Manifest user fee accounts are delinquent if the accounts remain unpaid by the due date specified in the invoice or other notice of the fee amount owed.

(2) Due dates for invoiced or electronically billed fee amounts shall be 30 days from the date of the electronic invoice or bill.

(b) *Financial penalty.* In accordance with 31 U.S.C. 3717(e), e-Manifest user fee accounts that are more than 90 days past due shall be charged an additional penalty of 6% per year assessed on any part of the debt that is past due for more than 90 days, plus any applicable handling charges.

(c) *Publication of delinquent payors' list.* If e-Manifest user fee accounts remain past due for 120 days or more, EPA may include the facility responsible for the delinquent account on a List of Delinquent Payors that the Agency will maintain on the program's Web site or similar medium where e-Manifest program information is provided.

(1) The information about delinquent payors shall include the name of the facility, the facility's EPA ID Number, and the amount of the delinquency at the time of the facility's inclusion on the List.

(2) The facility shall be removed from the List of Delinquent Payors when it has been determined that the delinquency has been cured to the satisfaction of the Agency.

(d) *Compliance with manifest completion requirement.* A manifest is fully complete when:

(1) The manifest has been submitted by the owner or operator to the e-Manifest system, as either an electronic submission or a paper manifest submission, and

(2) All user fees arising from the submission or correction of the manifest have been fully paid.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 9. The authority citation for Part 265 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, 6937, and 6939g.

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 10. Section 265.71 is amended by revising paragraph (j) and by adding a paragraph (l) to read as follows:

§ 265.71 Use of manifest system.

* * * * *

(j) *Imposition of user fee for electronic manifest use.* An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under § 265.71(a)(2)(v). EPA shall maintain and update from time-to-time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system.

* * * * *

(l) *Post-receipt manifest data corrections.* After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections must be completed by the owners or operators of the receiving facilities within 90 days of the receipt of manifested shipments of hazardous waste.

(1) Receiving facilities must enter all corrections to manifest data by electronic submission, either by directly entering corrected data to a web based service provided in e-Manifest for such corrections, or by an upload of a data file (*e.g.,* XML file) containing data corrections relating to one or more previously submitted manifests.

(2) Each correction submission must include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The Item Number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each Item Number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(3) Each correction submission shall include a statement that the facility representative submitting the corrections certifies, under penalty of law, that to the best of his or her knowledge or belief, the corrections that

are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete.

(i) The certification statement must be executed with a valid electronic signature.

(ii) A batch upload of data corrections may be submitted under one certification statement.

(4) Manifest data corrections initiated by the receiving facility should be initiated by a facility's correction submission no later than 60 days from the date receipt of the hazardous wastes under the affected manifest(s).

(i) Upon receipt of the facility's correction submission, other interested persons (other waste handlers on the manifests, EPA, appropriate states) will be provided electronic notice of the facility's proposed corrections.

(ii) Other interested persons shall have 15 days to respond to the facility's proposed corrections with any comments or suggested changes.

(iii) By the date 90 days after receipt of the original manifests for which data are being corrected, the facility must reconcile any comments received from other interested persons, and must either alter its correction submission accordingly, or affirm the accuracy of the initial correction submission.

(5) Manifest data corrections may be initiated by notice of a suspected data error provided to the the facility by other interested persons.

(i) Any notice of a suspected data error from an interested person must be provided to the facility by email or other form of electronic notice no later than the date 60 days after receipt of the original manifests affected by the suspected errors.

(ii) If timely notice of suspected data errors is provided to the facility, the facility shall have 15 days to provide its response to such notice by either submitting a correction submission with responsive data corrections, or by affirming that the data originally submitted are accurate and need no correction.

(iii) The facility must finally reconcile all notices or comments regarding data errors and corrections by the date 90 days after receipt of the affected hazardous waste manifests.

■ 11. Subpart FF is added to read as follows:

Subpart FF—Fees for the Electronic Hazardous Waste Manifest Program

Sec.

265.1300 Applicability.
265.1310 Definitions applicable to this subpart.
265.1311 Manifest transactions subject to fees.
265.1312 User fee calculation methodology.
265.1313 User fee revisions.
265.1314 How to make user fee payments.
265.1315 Sanctions for delinquent payments.

§ 265.1300 Applicability.

(a) This subpart prescribes:

(1) The methodology by which EPA will determine the user fees which owners or operators of facilities must pay for activities and manifest related services provided by EPA through the development and operation of the electronic hazardous waste manifest system (e-Manifest system); and

(2) The process by which EPA will revise e-Manifest system fees and provide notice of the fee schedule revisions to owners or operators of facilities.

(b) The fees determined under this subpart apply to owners or operators of facilities whose activities receiving, rejecting, or managing federally- or state-only regulated wastes or other materials bring them within the definition of "user of the electronic manifest system" under § 260.10 of this chapter.

§ 265.1310 Definitions applicable to this subpart.

The following definitions apply to this subpart:

Consumer Price Index means the consumer price index for all U.S. cities using the "U.S. city average" area, "all items" and "not seasonally adjusted" numbers calculated by the Bureau of Labor Statistics in the Department of Labor.

CROMERR Costs are the sub-category of Operations and Maintenance costs that are expended by EPA in implementing electronic signature, user registration, identity proofing, and copy of record solutions that meet EPA's electronic reporting regulations as set forth in the Cross Media Electronic Reporting Rule (CROMERR) as codified at 40 CFR part 3.

Electronic Manifest submissions means manifests that are initiated electronically using the electronic format supported by the e-Manifest system, and that are signed electronically and submitted electronically to the e-Manifest system by facility owners or operators to indicate the receipt or rejection of the wastes identified on the electronic manifest.

EPA Program Costs mean the Agency's intramural and non-information technology extramural costs expended in the design, development and operations of the e-Manifest system, as well as in regulatory development activities supporting e-Manifest, in conducting its capital planning, project management, oversight and outreach activities related to e-Manifest, in conducting economic analyses supporting e-Manifest, and in establishing the System Advisory Board to advise EPA on the system. Depending on the date on which EPA Program Costs are incurred, these costs may be further classified as either system setup costs or operations and maintenance costs.

Help Desk Costs mean the costs incurred by EPA or its contractors to operate the e-Manifest Help Desk, which EPA will establish to provide e-Manifest system users with technical assistance and related support activities.

Indirect Costs mean costs not captured as Marginal Costs, System Setup Costs, or Operations and Maintenance Costs, but that are necessary to capture because of their enabling and supporting nature, and to ensure full cost recovery. Indirect costs include, but are not limited to, such cost items as physical overhead, maintenance, utilities, and rents on land, buildings, or equipment. Indirect costs also include the EPA costs incurred from the participation of EPA offices and upper management personnel outside of the lead program office responsible for implementing the e-Manifest program.

Manifest Submission Type means the type of manifest submitted to the e-Manifest system for processing, and includes electronic manifest submissions and paper manifest submissions.

Marginal Labor Costs mean the human labor costs incurred by staff operating the paper manifest processing center in conducting data key entry, QA, scanning, copying, and other manual or clerical functions necessary to process the data from paper manifest submissions into the e-Manifest system's data repository.

Operations and Maintenance Costs mean all system related costs incurred by EPA or its contractors after the activation of the e-Manifest system. Operations and Maintenance Costs include the costs of operating the electronic manifest information technology system and data repository, CROMERR Costs, Help Desk Costs, EPA Program Costs incurred after e-Manifest system activation, and the costs of operating the paper manifest processing center, other than the paper processing center's Marginal Labor Costs.

Paper Manifest Submissions mean submissions to the paper processing center of the e-Manifest system by facility owners or operators, of the data from the designated facility copy of a paper manifest, EPA Form 8700–22, or a paper Continuation Sheet, EPA Form 8700–22A. Such submissions may be made by mailing the paper manifests or continuation sheets, by submitting image files from paper manifests or continuation sheets, or by submitting both an image file and data file (*e.g.*, XML) in a format supported by the e-Manifest system's paper processing center.

System Setup Costs mean all system related costs, intramural or extramural, incurred by EPA prior to the activation of the e-Manifest system. Components of System Setup Costs include the procurement costs from procuring the development and testing of the e-Manifest system, and the EPA Program Costs incurred prior to e-Manifest system activation.

§ 265.1311 Manifest transactions subject to fees.

(a) Fees shall be assessed on a per manifest basis for the following manifest submission transactions:

(1) The submission of each electronic manifest that is electronically signed and submitted to the e-Manifest system by the owners or operators of receiving or designated facilities; and

(2) The submission of each paper manifest submission to the paper processing center by owners or operators of receiving or designated facilities;

(b) Supplemental fees shall be assessed on a per transaction basis for the following manifest related transactions:

(1) The sorting, recovery, and return to sender of extraneous documents or other information submitted to the paper processing center with mailed copies of paper manifests by owners or operators of receiving or designated facilities, and

(2) The processing of manifest data correction submissions by owners or operators of receiving or designated facilities, for the data entry, QA, and other activities necessary to process corrected data into the e-Manifest system.

§ 265.1312 User fee calculation methodology.

(a) The fee calculation formula or methodology that EPA will use initially to determine per manifest fees is as follows:

$$Fee_i = \left(Marginal\ Cost_i + \frac{System\ Setup\ Cost}{Years \times N_t} + \frac{O\&M\ Cost}{N_t}\right) \times (1 + Indirect\ Cost\ Factor)$$

System Setup Cost = Procurement Cost + EPA Program Cost

O&M Cost = Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services

Where:

Fee_i represents the per manifest fee for each manifest submission type "i,"

N_t refers to the total number of manifests completed in a year, and

(b) If after 4 years of system operations, electronic manifest usage does not equal or exceed 75% of total manifest usage, EPA will transition to the following formula or methodology to determine per manifest fees:

$$Fee_i = \left(Marginal\ Cost_i + \frac{System\ Setup\ Cost}{Years \times N_t} + \frac{O\&M_i\ Cost}{N_i}\right) \times (1 + Indirect\ Cost\ Factor)$$

System Setup Cost = Procurement Cost + EPA Program Cost

$O\&M_{fully\ electronic}$Cost = Electronic System O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services

$O\&M_{all\ other}$Cost = Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services

N_i refers to the total number of one of the four manifest submission types "*i*" completed in a year.

$O\&M_i$ Cost refers to the differential O&M Cost for each manifest submission type "*i*."

§ 265.1313 User fee revisions.

(a) EPA will revise the fee schedules for e-Manifest submissions and related activities at two-year intervals, by utilizing the applicable fee calculation formula prescribed in § 265.1312 and the most recent program cost and manifest usage numbers based on fiscal year data for the fiscal year beginning on October 1 of odd numbered years.

(1) The fee schedules will be published to users through the e-Manifest program Web site by March 1 of each even numbered year, and will cover the two-year period beginning on June 1 of that year and ending on May 31 of the next even numbered year two years later.

(b) *Inflation adjuster.* The second year fee schedule shall be adjusted for inflation by using the following adjustment formula:

$Fee\mathit{i}_{Year2} = Fee\mathit{i}_{Year1}$ X $(CPI_{Year2-2}/CPI_{Year2-1})$,

Where:

$Fee\mathit{i}_{Year2}$ is the Fee for each type of manifest submission "*i*" in Year 2 of the fee cycle,

$Fee\mathit{i}_{Year1}$ is the Fee for each type of manifest submission "*i*" in Year 1 of the fee cycle, and

$CPI_{Year2-2}/CPI_{Year2-1}$ is the ratio of the CPI published for the year two years prior to Year 2 to the CPI for the year one year prior to Year 2 of the cycle.

(c) *Revenue recovery adjusters.* The fee schedules published at two-year intervals under this section shall include adjustments to recapture revenue lost in the previous two-year fee cycle on account of imprecise estimates of manifest usage and of uncollectable manifests.

(1) The adjustment for imprecise estimates of manifest usage shall be calculated using the following adjustment formula to calculate a revenue recapture amount which will be added to O&M Costs in the fee calculation formula of § 265.1312:

Revenue $Recapture_i = (N_{iYear1} + N_{iYear2})_{Actual} - (N_{iYear1} + N_{iYear2})_{Est} \times Fee_{i(Ave)}$.

Where:

Revenue $Recapture_i$ is the amount of fee revenue recaptured for each type of manifest submission "*i*,"

$(N_{iYear1} + N_{iYear2})_{Actual} - (N_{iYear1} + N_{iYear2})_{Est}$ is the difference between actual manifest numbers submitted to the system for each manifest type during the previous 2-year cycle, and the numbers estimated when we developed the previous cycle's fee schedule, and

$\mathrm{Fee}_{i(\mathrm{Ave})}$ is the average fee charged per manifest type over the previous two-year cycle.

(2) The adjustment for uncollectable manifests shall be calculated using the following adjustment formula to calculate an Uncollectable Revenue recovery amount, which will be added to O&M Costs in the fee calculation formula of § 265.1312:

$$\text{Uncollectable Revenue}_i = (N_{i\mathrm{Year1}} + N_{i\mathrm{Year2}})_{\mathrm{UNCOLLECTABLE}} \times \mathrm{Fee}_{i(\mathrm{Ave})},$$

Where:

$(N_{i\mathrm{Year1}} + N_{i\mathrm{Year2}})_{\mathrm{UNCOLLECTABLE}}$ is the sum of the number of uncollectable manifests of each type "*i*" over the previous two-year cycle, and

$\mathrm{Fee}_{i(\mathrm{Ave})}$ is the average fee charged for each manifest type "i" during the previous cycle.

§ 265.1314 How to make user fee payments.

(a) All fees required by this subpart shall be paid by the owners or operators of the receiving or designated facility (the facility) in response to an electronic invoice or bill identifying manifest related services provided the user during the previous month and identifying the fees owed for the enumerated services.

(b) All fees required by this subpart shall be paid to EPA by the facility electronically in U.S. dollars, using one of the electronic payment methods supported by the Department of the Treasury's Pay.gov online electronic payment service, or any applicable additional or successor online electronic payment service offered by the Department of Treasury.

(c) All fees for which payments are owed in response to an electronic invoice or bill must be paid within 30 days of the date of the invoice or bill.

§ 265.1315 Sanctions for delinquent payments.

(a) *Interest.* In accordance with 31 U.S.C. 3717(a)(1), delinquent e-Manifest user fee accounts shall be charged a minimum annual rate of interest equal to the average investment rate for Treasury tax and loan accounts (Current Value of Funds Rate or CVFR) for the 12-month period ending September 30th of each year, rounded to the nearest whole percent.

(1) E-Manifest user fee accounts are delinquent if the accounts remain unpaid by the due date specified in the invoice or other notice of the fee amount owed.

(2) Due dates for invoiced or electronically billed fee amounts shall be 30 days from the date of the electronic invoice or bill.

(b) *Financial penalty.* In accordance with 31 U.S.C. 3717(e), e-Manifest user fee accounts that are more than 90 days past due shall be charged an additional penalty of 6% per year assessed on any part of the debt that is past due for more than 90 days, plus any applicable handling charges.

(c) *Publication of delinquent payors' list.* If e-Manifest user fee accounts remain past due for 120 days or more, EPA may include the facility responsible for the delinquent account on a List of Delinquent Payors that the Agency will maintain on the program's Web site or similar medium where e-Manifest program information is provided.

(1) The information about delinquent payors shall include the name of the facility, the facility's EPA ID Number, and the amount of the delinquency at the time of the facility's inclusion on the List.

(2) The facility shall be removed from the List of Delinquent Payors when it has been determined that the delinquency has been cured to the satisfaction of the Agency.

(d) *Compliance with manifest completion requirement.* A manifest is fully complete when:

(1) The manifest has been submitted by the owner or operator to the e-Manifest system, as either an electronic submission or a paper manifest submission, and

(2) All user fees arising from the submission or correction of the manifest have been fully paid.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 12. The authority section for part 271 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6926, and 6939g.

■ 13. Section 271.12 is amended by adding paragraph (k) to read as follows:

* * * * *

(k) Requirements to pay user fees to EPA to recover EPA's costs related to the development and operation of an electronic hazardous waste manifest system.

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Part VI

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Part 11

Horse Protection; Licensing of Designated Qualified Persons and Other Amendments; Proposed Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. APHIS–2011–0009]

RIN 0579–AE19

Horse Protection; Licensing of Designated Qualified Persons and Other Amendments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the horse protection regulations to provide that the Animal and Plant Health Inspection Service (APHIS) will train and license Designated Qualified Persons (DQPs) to inspect horses at horse shows, exhibitions, sales, and auctions for compliance with the Horse Protection Act. DQPs are currently trained and licensed through programs certified by APHIS and initiated and maintained by horse industry organizations (HIOs). Under this proposal, APHIS will train and license DQPs on an individual basis. The proposed changes to the regulations would relieve HIOs of all regulatory burdens and requirements. We would also establish a process by which APHIS could revoke the license of a DQP for professional misconduct or failure to conduct inspections in accordance with the regulations. We would establish requirements to minimize conflicts of interest between DQPs and others within the horse industry that enable the practice of soring. We are also proposing several changes to the responsibilities of management of horse shows, exhibitions, sales, and auctions, as well as changes to the list of devices, equipment, substances, and practices that can cause soring or are otherwise prohibited under the Horse Protection Act and regulations. Additionally, we are proposing to amend the inspection procedures that DQPs are required to perform. These actions would strengthen existing requirements intended to protect horses from the unnecessary and cruel practice of soring and eliminate unfair competition.

DATES: We will consider all comments that we receive on or before September 26, 2016. We will also consider comments made at public hearings to be held in Murfreesboro, TN, on Tuesday, August 9, 2016; Lexington, KY, on Wednesday, August 10, 2016; Sacramento, CA, on Tuesday, August 16, 2016; Riverdale, MD, on Tuesday, September 6, 2016; and during a virtual public hearing on Wednesday, September 15, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0009.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2011–0009, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0009* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

Public Hearings: Public hearings regarding this rule will be held at the following locations:

1. Murfreesboro, TN: Embassy Suites, 1200 Conference Center Boulevard, Murfreesboro, TN.
2. Lexington, KY: Clarion Hotel Lexington, 1950 Newtown Pike, Lexington, KY.
3. Sacramento, CA: Courtyard Sacramento Airport Natomas, 2101 River Plaza Drive, Sacramento, CA.
4. Riverdale, MD: USDA Center at Riverside, 4700 River Road, Riverdale, MD.
5. A virtual public hearing will also be held. Persons wishing to participate in the virtual hearing are required to register at *http://ems7.intellor.com?do=register&t=1&p=706174.* Upon registering, persons will receive an email containing dial-in numbers and a personalized access code.

FOR FURTHER INFORMATION CONTACT: Dr. Kay Carter-Corker, Assistant Deputy Administrator, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737; (301) 851–3751.

SUPPLEMENTARY INFORMATION:

Public Hearings

We are advising the public that we are hosting five public hearings on this proposed rule. The first public hearing will be held in Murfreesboro, TN, on Tuesday, August 9, 2016, beginning at 9 a.m. local time. The second public hearing will be held in Lexington, KY, on Wednesday, August 10, 2016, beginning at 9 a.m. local time. The third public hearing will be held in Sacramento, CA, on Tuesday, August 16, 2016, beginning at 9 a.m. local time. The fourth public hearing will be held in Riverdale, MD, on Tuesday, September 6, 2016, beginning at 9 a.m. local time. The fifth public hearing, which will be conducted as virtual hearing, will be held on Wednesday, September 15, 2016, beginning at 5 p.m. EDT. Each hearing will begin at the appointed time and may continue for up to 4 hours depending on the number of persons desiring to speak. Each hearing may be terminated at any time (*i.e.,* prior to the expiration of the 4 hour time period) if all persons desiring to speak and who are present in the hearing room or participating in the virtual hearing have been heard.

A representative of the Animal and Plant Health Inspection Service (APHIS) will preside at each of the public hearings. Any interested person may appear and be heard in person, by attorney, or by other representative. For the virtual hearing, any person may call in to be heard. Information about the hearings can be viewed online at *https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/horse-protection-amendments.* Written statements may be submitted and will be made part of the hearing record. A transcript of the public hearings will be placed in the rulemaking record and will be available for public inspection.

Registration is required to speak at one or more of the public hearings. Registration for the face-to-face hearings may also be accomplished by registering with the presiding officer 30 minutes prior to the scheduled start of each hearing (*i.e.,* 8:30 a.m. local time). Persons who wish to speak at a hearing will be asked to sign in with their name and organization to establish a record for the hearing. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. The presiding officer may limit the time for each presentation so that all interested persons appearing at the face-to-face hearings, or calling in to the virtual hearing, have an opportunity to participate.

The purpose of the hearings is to give interested persons an opportunity for presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearings, except to clarify or explain provisions of the proposed rule.

Information on the public hearings can be found on the Internet at *https://*

www.aphis.usda.gov/aphis/ourfocus/animalwelfare/horse-protection-amendments.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Executive Summary

I. Purpose of Regulatory Action

In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821–1831), referred to below as the Act, or the HPA, to eliminate the practice of soring by prohibiting the showing or selling of sored horses. The regulations in 9 CFR part 11 implement the Act.

In the Act, Congress found and declared that the soring of horses is cruel and inhumane. The Act states that the term "sore" when used to describe a horse means that:

- An irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse;
- Any burn, cut, or laceration has been inflicted by a person on any limb of a horse;
- Any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse; or
- Any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse;

and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving.

Soring has been primarily used in the training of Tennessee Walking Horses, Racking Horses, and related breeds to produce an exaggerated gait for competition. However, the Act is intended to enforce prohibitions against soring in all horse breeds. In addition to declaring that the soring of horses is cruel and inhumane, Congress found that horses shown or exhibited that are sore compete unfairly with horses that are not sore. Congress further found that the movement, showing, exhibition, or sale of sore horses in intrastate commerce adversely affects and burdens interstate and foreign commerce because it creates unfair competition, deceives the spectating public and horse buyers, and negatively impacts horse sales.

Section 4 of the Act, as amended (15 U.S.C. 1823), requires the Secretary of Agriculture to prescribe by regulation requirements for the appointment by the management of a horse show, exhibition, sale, or auction (referred to below as "show management") of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for the purpose of enforcing the Act. Although show management is not required to appoint these so called "designated qualified persons" (DQPs) to inspect horses, if show management chooses not to do so, it may be liable for violating the HPA if it fails to disqualify a sore horse. If, alternatively, show management appoints DQPs, it may be held liable only for failing to disqualify a sore horse after being notified by a DQP or by the Secretary of Agriculture, or his designee, that a horse is sore.

To implement that amendment, the Animal and Plant Health Inspection Service (APHIS) established the DQP program in 1979. Horse industry organizations with a DQP program certified by APHIS (referred to as HIOs, below), are responsible for training and licensing DQPs to inspect horses at shows, exhibitions, sales, or auctions. Under this program, DQPs are trained and licensed by the HIO to inspect horses to determine compliance with the Act and regulations.

In response to public concerns about the ability of APHIS' Horse Protection Program to detect and prevent soring, the United States Department of Agriculture's (USDA's) Office of the Inspector General (OIG) evaluated APHIS' oversight of the program. OIG examined whether inspections conducted by HIO-trained and licensed DQPs to detect soring were adequate and whether occasional, unannounced inspections by APHIS officials provided sufficient oversight of DQPs.

In September 2010, OIG issued a report concluding, among other things, that the DQP program for inspecting gaited horses is not adequate to ensure that horses are not being sored for the purposes of enhanced performance, in part because it found that DQPs have a "clear conflict of interest" with respect to their decisions on whether or not to identify a violation of the HPA. To remove that conflict of interest and to achieve the goals of the HPA, OIG recommended that APHIS eliminate the DQP program in its current form and assume a direct involvement in the accreditation and monitoring of horse inspectors and the conditions and procedures of the horse inspection process.

Summary of Major Provisions

APHIS agrees with the OIG's conclusion that the current program of HIOs training and licensing DQPs is not adequately detecting soring or promoting enforcement of the Act. We are proposing several provisions to the regulations in 9 CFR part 11 that will increase APHIS' ability to oversee the Horse Protection program and enforce provisions of the Act and regulations. Changes we are proposing to the regulations include:

- Having APHIS assume the training, licensing, and monitoring of third-party, independent inspectors to conduct inspections at shows, exhibitions, sales, and auctions,
- Amending the regulations to prohibit use of pads, substances, and action devices on horses at horse shows, exhibitions, sales, and auctions,
- Adding licensing eligibility requirements for DQPs[1] and revising training requirements and inspection procedures,
- Amending existing access, space, and facility requirements for management of horse shows, exhibitions, sales, and auctions,
- Amending management recordkeeping and reporting requirements,
- Ensuring there are at least 2 DQPs employed at shows in which 150 horses or fewer are entered, and more than 2 DQPs for shows at which more than 150 horses are entered,
- Requiring that a farrier be available at every horse show, exhibition, sale, and auction, and
- Removing from the regulations all regulatory responsibilities pertaining to HIOs.

II. Costs and Benefits

The proposed rule would promote the Act's goal of ending the unnecessary, cruel and inhumane practice of soring by helping to ensure that horses present at and participating in exhibitions, sales, shows, or auctions are not sored. This benefit is an unquantifiable animal welfare enhancement. Furthermore, these changes would further the statutory mandate of Congress to prohibit the showing or exhibiting of sored horses, remove the incentive to painfully mistreat horses, and prevent unfair competition by horses shown or exhibited that are sore. Congress also found that the movement, showing, exhibition, or sale of sore horses in intrastate commerce adversely affects and burdens interstate and foreign commerce.

The proposed amendments concerning management recordkeeping and reporting, and granting of access, space, and facilities for inspections, are intended to consolidate or clarify existing provisions of the HPA. These proposed changes are procedural and should not impose additional costs for the show management.

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[1] As we explain later in this document, we propose to change the term "Designated Qualified Person" throughout the regulations to "Horse Protection Inspector," or HPI, as the latter term more accurately describes the tasks performed by these persons.

Of these proposed amendments to the horse protection regulations, only the amendments requiring a farrier to be present for all shows and a minimum of 2 inspectors for shows with 150 or fewer horses and more than 2 inspectors for shows with more than 150 horses may result in additional costs for the shows or their participants.[2] Based on APHIS estimates, the costs of services provided by veterinarians, farriers, and inspectors range from a few hundred to several thousand dollars. Many if not most of the entities that may be affected by this proposed rule are small.

While the proposed rule would result in better oversight of inspectors and enforcement of the HPA, implementation of the proposed changes would result in additional administrative and technological tasks associated with training and licensing inspectors. These tasks include designing, coordinating, and delivering training and providing program guidance and oversight. With program allocated funds, APHIS personnel would support these additional training needs while continuing to attend a percentage of horse events in order to ensure consistency among inspectors, address performance concerns, and inspect horses for compliance with the Act.

Background

In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821–1831), referred to below as the Act, or HPA, to eliminate the practice of soring by prohibiting the showing or selling of sored horses. The regulations in part 11, referred to below as the regulations, implement the Act.

In the Act, Congress found and declared that the soring of horses is cruel and inhumane. The Act states that the term "sore" when used to describe a horse means that:

- An irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse;
- Any burn, cut, or laceration has been inflicted by a person on any limb of a horse;
- Any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse; or
- Any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse;

and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving.

Soring has been primarily used in the training of Tennessee Walking Horses, Racking Horses, and related breeds to produce an exaggerated gait for competition. However, the Act is intended to enforce prohibitions against soring in all horse breeds. Congress found that horses shown or exhibited that are sore compete unfairly with horses that are not sore. Congress further found that the movement, showing, exhibition, or sale of sore horses in intrastate commerce adversely affects and burdens interstate and foreign commerce.

Section 4 of the Act, as amended (15 U.S.C. 1823), requires the Secretary of Agriculture to prescribe by regulation requirements for the appointment by the management of a horse show, exhibition, sale, or auction (referred to below as "show management") of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for the purpose of enforcing the Act. Although show management is not required to appoint these so called "designated qualified persons" (DQPs) to inspect horses, if management chooses not to do so, it may be liable for violating the HPA if it fails to disqualify a sore horse. If, alternatively, show management appoints DQPs, it may be held liable only for failing to disqualify a sore horse after being notified by a DQP or by the Secretary of Agriculture, or his designee, that a horse is sore.

To implement that amendment, the Animal and Plant Health Inspection Service (APHIS) established the DQP program in 1979. Horse industry organizations with a DQP program certified by APHIS (referred to as HIOs, below), are responsible for training and licensing DQPs to inspect horses at shows, exhibitions, sales, or auctions. Under this program, DQPs are trained and licensed by the HIO to inspect horses and determine compliance with the Act and regulations. In order to be certified by APHIS, HIO programs must meet the requirements in § 11.7 of the current regulations for licensing, training, recordkeeping and reporting, and DQP standards of conduct.

Under the current regulations, show management can forego appointing and retaining a DQP and assume responsibility for ensuring that sored horses are not participating in their event. In most cases, however, shows appoint and retain DQPs licensed by certified HIOs. The HIO provides the show with DQPs to conduct inspections to determine compliance with the Act and regulations and may impose industry-established penalties for violations identified in an HIO's rulebook. HIOs are currently required to provide at least 2 DQPs when more than 150 horses are entered in an event and can pay the DQPs from fees paid to them by show management. Any horses discovered by the DQP to be in noncompliance with the Act or regulations must be reported to show management. Show management must then prohibit those horses from being shown, exhibited, sold, or auctioned, and, if show management fails to do so, it will constitute noncompliance with the Act and regulations.

With passage of the Horse Protection Act in 1970, APHIS' annual budget for the Horse Protection Program was set by Congress at $500,000[3] yearly and has changed little since that time. Under this budget, APHIS sends officials to a small number of horse shows to observe DQPs and conduct inspections.[4]

DQPs trained and licensed by USDA-certified HIOs and appointed and retained by show management are the primary parties responsible for inspecting horses to determine compliance with the Act.[5]

Office of the Inspector General Audit

In response to public concerns about the ability of the Horse Protection Program to detect and prevent soring, USDA's OIG conducted an evaluation of the program. The OIG examined whether inspections conducted by HIO-trained and licensed DQPs to detect soring were adequate and whether occasional, unannounced inspections by APHIS officials provided sufficient oversight of DQPs. OIG auditors gathered evidence for the audit from several sources, including visits to horse shows and interviews with APHIS Horse Protection Program management and staff. In September 2010, OIG issued a report[6] on APHIS' administration of the Horse Protection Program and the Slaughter Horse Transport Program.

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[2] Additional inspector oversight is needed for pre-inspection warm-up areas at shows and exhibitions, as we have observed that it is difficult for a single inspector to inspect and monitor 150 or more entries at a show. A farrier needs to be made available to remove a shoe so the inspector may examine a horse's hoof for evidence of soring. We note that shows frequently have a farrier present, so this requirement should not significantly affect current practices.

[3] In 2014 and 2015, the budget allocation for the program was $697,000 for each year, amounting to a $197,000 annual increase over the budget set in 1970.

[4] Shows attended by USDA can be found on the APHIS Horse Protection Act Inspection and Enforcement Web page: *https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_hpa/activity-and-show-reports.*

[5] DQP inspection data from 2010–2015 is located on the APHIS Horse Industry Organizations and Designated Qualified Persons Web page: *https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_hpa/ct_hpa_hio_and_dqps.*

In the report, the OIG auditors identified multiple conflicts of interest among DQPs, the HIOs that train, license, and employ them, horse exhibitors, and management of shows and exhibitions that affiliate with HIOs for inspection services. OIG auditors concluded that these conflicts of interest have contributed to sored horses being allowed to compete while sore. OIG auditors found that DQPs are reluctant to dismiss sored horses discovered during inspections because doing so inconveniences show management and makes it less likely the DQP will be hired for other shows. Moreover, some DQPs own and exhibit their own horses, so a DQP inspecting an exhibitor's horse at one show may be facing that exhibitor inspecting horses at another show. In such an environment, the OIG noted that DQPs frequently fail to visually and physically inspect horses in accordance with the Act and regulations.

The OIG auditors found that DQPs avoid documenting instances of soring in several ways. DQPs often provide warnings to exhibitors when they detect soring in a horse, when under the regulations they are required to recommend to show management that the horse be prohibited from performing. The report also concluded that DQPs fail to sufficiently inspect and weigh chains, boots, and other action devices as currently required in the regulations.

The report noted that when DQPs document noncompliance with the Act, they often identify a stable hand or a relative of the exhibitor as the alleged violator of the Act, so that the person actually responsible for the alleged violation can avoid responsibility. Furthermore, the report stated that there are no reliable controls in place to prevent an exhibitor who is serving an industry-issued suspension for a violation of an HIO's rulebook from competing in another show.

APHIS veterinary medical officers conduct unannounced inspections at selected horse events to evaluate DQPs and to visually and physically inspect horses for indications of soring and determine compliance with the Act and regulations. However, as noted above, APHIS officials can only attend a small number of shows, sales, exhibitions and auctions each year. OIG noted that DQPs were much more likely to document noncompliance with the Act when APHIS was also present at a horse show. From the shows OIG reviewed, it found that DQPs issued 49 percent of their total violations at the 6 percent of shows at which APHIS officials also attended.

Given the above issues, the OIG report concluded that the DQP program for inspecting gaited horses is inadequate to ensure that horses are not being sored for the purposes of enhanced performance. OIG recommended that APHIS eliminate the DQP inspection program in its current form and assume a direct involvement in the licensing and monitoring of inspectors and the conditions and procedures of the horse inspection process.

APHIS agrees with OIG's conclusion that the current program of HIOs training and licensing DQPs is not adequately detecting instances of soring. Our observations of inadequacies within the DQP program are consistent with those described by OIG auditors. Therefore, to achieve the Act's purpose of ending the soring of horses, additional changes to the regulations are necessary.

Proposed Changes to the Regulations

In this rule, we are proposing to revise the Horse Protection regulations in 9 CFR part 11 to improve our enforcement of the Act and regulations. The proposed changes would include a reorganization of part 11 so that the requirements are clearer and better organized. The revised and new sections we propose would appear in the regulations as listed below:

§ 11.1 Definitions.

§ 11.2 Prohibited actions, practices, devices, and substances.

§ 11.3 Scar rule.

§ 11.4 Providing required information.

§ 11.5 Inspection and detention of horses; responsible parties.

§ 11.6 Training and licensing of Horse Protection Inspectors (HPIs).

§ 11.7 [Reserved]

§ 11.8 [Reserved][7]

§ 11.9 Management responsibilities; access, space, and facilities.

§ 11.10 Management responsibilities; operation of horse shows, horse exhibitions, and horse sales and auctions.

§ 11.11 Management responsibilities; records and reporting.

§ 11.12 Inspection procedures for HPIs.

§ 11.13 Requirements concerning persons involved in transportation of certain horses.

Changes we propose to make include the following:

- Changing the term "Designated Qualified Person" throughout the Horse Protection regulations to "Horse Protection Inspector" to more accurately describe the tasks performed by these persons.[8] We are also proposing to revise the definition of this term in § 11.1 to reflect our proposal to have APHIS assume the regulatory responsibility for training and licensing of DQPs.
- Retitling § 11.2 as "Prohibited actions, practices, devices, and substances" and prohibiting all action devices, pads, and substances applied to a horse's limbs. Also prohibited is any practice involving a horse, and, as a result of such practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving.
- Moving the inspection and detention requirements in current § 11.4 to a revised § 11.5. We would move the prohibition against providing false information from current § 11.2(e) to § 11.4 and retitle revised § 11.4 as "Providing required information."
- Revising § 11.5 so that it consolidates horse inspection and detention requirements that must be observed by custodians of horses and retitling it "Inspection and detention of horses; responsible parties." Access to premises and records pertaining to exhibitors would remain in revised § 11.5 and access pertaining to management would be moved to a new § 11.9.
- Revising § 11.6 to indicate that APHIS would undertake the training and licensing of horse inspectors and adding new requirements for license eligibility. We would retitle § 11.6 as "Training and licensing of Horse Protection Inspectors." Inspection space and facility requirements currently in § 11.6 would be moved to revised § 11.5.
- Revising § 11.7 by moving all inspector training and licensing

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[6] APHIS Administration of the Horse Protection Program and the Slaughter Horse Transport Program: Office of the Inspector General Audit Report. Available at *http://www.usda.gov/oig/webdocs/33601-02-KC.pdf.*

[7] Sections 11.7 and 11.8 are reserved for future use.

[8] In this document, we use the term "Designated Qualified Person" or "DQP" when referring to the current regulations. We use the term "Horse Protection Inspector," or "HPI," when referring to our proposed changes to the regulations.

requirements to revised § 11.6 so that all such inspector requirements are consolidated in one section. We would also remove from § 11.7 all regulatory requirements pertaining to HIOs in this and all other sections of 9 CFR part 11, as HIOs would no longer have any regulatory responsibilities. Section 11.7 and a new § 11.8 would be reserved.

- Adding a new § 11.9, titled "Management responsibilities; access, space, and facilities," that draws together access, space, and facility requirements from current § 11.5 and other sections pertaining to management of horse shows, exhibitions, sales, and auctions. This section also includes proposed requirements that limit the number of persons allowed in designated horse inspection and warm-up areas and that prohibit show management from influencing attendees to interfere with the duties of authorized inspectors and APHIS representatives.
- Adding a new § 11.10, titled "Management responsibilities; operation of horse shows, horse exhibitions, and horse sales and auctions," that draws together operating requirements from other sections. This section also includes proposed requirements intended to prevent prohibited persons from participating in shows, exhibitions, sales, or auctions.
- Adding a new § 11.11, titled "Management responsibilities; records and reporting," that draws together management recordkeeping and reporting requirements from other sections. Included in this section is a provision that would provide additional time for management to provide APHIS with information for each horse prohibited by management or its representatives from being shown, exhibited, sold or auctioned.
- Adding a new § 11.12, "Inspection procedures for HPIs," that draws together inspection procedures for inspectors from § 11.21 and other sections. In this section we also propose additional requirements to ensure that an inspector can conduct an effective inspection of the horse to determine compliance with the Act or regulations.
- Adding a new § 11.13, titled "Requirements concerning persons involved in transportation of certain horses," that draws together horse transportation requirements from § 11.40 and other sections.
- Removing §§ 11.20, 11.21, 11.22, 11.23, 11.24, 11.25, 11.40, and 11.41 from the regulations. As noted above, some material from these sections would be moved to the proposed new and remaining sections of part 11. All regulatory responsibilities specifically pertaining to HIOs in these sections would be removed from the regulations.

We now describe each section in our proposed revision of the Horse Protection regulations.

Definitions

We would make changes to several terms and definitions in § 11.1 that reflect our proposed changes to the Horse Protection program.

We would remove the definition for *APHIS Show Veterinarian.* We would continue to have APHIS veterinary staff attend shows and monitor inspections, but we would no longer formally use this title to refer to such staff.

We would add a definition for the term *custodian,* which describes any person who is responsible for directing, controlling, and supervising the horse during inspection at any horse show, exhibition, sale, or auction. The definition includes any person who shows or exhibits, or enters for the purpose of showing or exhibiting in any horse show or horse exhibition any horse, as well as any person who sells, auctions, or offers for sale in any horse sale or auction any horse. The definition also includes any person who owns a horse and allows the horse to be shown, exhibited, or entered in a show or exhibition; sold, auctioned, or entered in a sale or auction; or transported for any of these purposes, as well as any person who transports a horse for any of these purposes. In addition, the custodian must be able to provide required information about the horse. We are proposing adding this term in order to more clearly identify the custodian.

We are also proposing to change the current term *Designated Qualified Person* to *Horse Protection Inspector* in this section and throughout the regulations because it more accurately describes the duty performed by such persons. We would also amend the definition of this term to reflect our proposal to transfer to APHIS the regulatory responsibility to train and license inspectors. These Horse Protection Inspectors, or HPIs, would not be APHIS officials or employees, and APHIS would not pay them for performing their duties. We would indicate in our proposed definition that the management of a horse show, exhibition, sale, or auction can appoint and retain an APHIS-trained and licensed HPI to inspect horses and records pertaining to such horses for compliance with the HPA.

A *horse industry organization* (HIO) is currently defined as "an organized group of people, having a formal structure, who are engaged in the promotion of horses through the showing, exhibiting, sale, auction, registry, or any activity which contributes to the advancement of the horse." We propose to remove this definition from the definition section of the regulations. Under the changes we propose, the regulations in part 11 would remove all regulatory burdens and requirements pertaining to HIOs, including the requirements for certification of DQP programs, and recordkeeping, and other requirements specific to HIOs.

The current regulations define *inspection* to mean "the examination of any horse and any records pertaining to any horse by use of whatever means are deemed appropriate and necessary for the purpose of determining compliance with the Act and regulations." To clarify that this determination is made by APHIS, we would amend the definition of *inspection* to indicate any visual, physical, and diagnostic means approved by APHIS to determine compliance with the Act and regulations. The proposed definition would go on to explain that such inspection may include, but is not limited to, visual inspection of a horse and review of records, physical inspection of a horse, including touching, rubbing, palpating, and observation of vital signs, and the use of any diagnostic device or instrument, and may require the removal of any shoe or any other equipment, substance, or paraphernalia from the horse when deemed necessary by the person conducting such inspection.

We would remove the definition for *lubricant.* Such substances are frequently used to reduce friction caused by action devices on the limbs of Tennessee Walking Horses, Racking Horses, and related horse breeds. However, as we propose to prohibit all action devices, lubricants would no longer be necessary.

We also propose removing the term *Regional Director* from the definitions in § 11.1. APHIS representatives performing Horse Protection Program duties are no longer supervised by a regional director.

Finally, we would add a definition for the term *substance.* This term would be defined as any agent applied to a horse's limbs while a horse is shown, exhibited, or offered for sale, or otherwise present on the grounds at any horse show, exhibition, sale, or auction. This definition would also include agents applied to a horse's limbs before and after a horse is shown, exhibited, or offered for sale, or otherwise present on the grounds at any horse show, exhibition, sale, or auction. We propose to prohibit the presence of all substances on the limbs of any Tennessee Walking Horse, Racking Horse, or related breed while the horse is present on the grounds at any horse show, exhibition, sale, or auction.

Prohibited Actions, Practices, Devices, and Substances

We propose to revise current § 11.2, "Prohibitions concerning exhibitors." We would amend this section by renaming it "Prohibited actions, practices, devices, and substances," as our proposed revision of this section focuses on prohibiting actions, practices, devices, and substances that can be used to sore horses.

Paragraph (a) of § 11.2 currently prohibits any chain, boot, roller, collar, action device, and any other device, method, practice, or substance used with respect to any horse at any horse show, horse exhibition, or horse sale or auction if such use causes or can reasonably be expected to cause such horse to be sore. We would remove current paragraph (a), as the prohibitions it includes would be covered under paragraph (b), "Specific prohibitions," and redesignate paragraph (b) as paragraph (a).

In a 1979 rulemaking,[9] APHIS amended several provisions of the Horse Protection regulations to prevent the showing, exhibiting, selling, or auctioning of sore horses. Among the provisions were those restricting the equipment, devices, and substances allowed to be present on horses. APHIS has observed from its experience in enforcing the Act and regulations that a relationship exists between the use of such items and soring in horses. APHIS stated in the rule that "if the horse industry makes no effort to establish a workable self-regulatory program for the elimination of sore horses, or if such program is established but does not succeed in eliminating the sore horse within a reasonable length of time, the Department will give serious consideration to the prohibition of all action devices and pads."

As we indicated we would do in the 1979 rule cited above, we have given serious consideration to prohibiting all action devices and pads, as the current industry inspection program has failed to adequately address instances of soring. The Department believes that 38 years has been more than enough time for the gaited horse industry to reform its training practices to comply with the Act. Therefore, to successfully and significantly reduce the number of sored horses shown, exhibited, sold, and auctioned, we are proposing to prohibit the use of pads, action devices, and substances on the limbs of any Tennessee Walking Horse, Racking Horse, or related breed.

Our experience indicates that the majority of horse shows contain numerous classes, and that large numbers of horses participating in those shows are flat-shod horses (those that do not use the pads and action devices this proposed rule would seek to prohibit). Some shows are entirely flat-shod and already prohibit pads and action devices. To our knowledge, the proposed rule would not have any impact on those horses. Additionally, although action devices and pads would be prohibited, the horse itself would still be eligible to compete, albeit in classes that do not use action devices or pads. We welcome public comments as to how many flat-shod horses there are versus how many are entered into performance classes at HPA-covered events.

Our proposal to prohibit the use of all such items that can induce soring, combined with a corps of third-party inspectors working independently of the horse industry, will place the Department in a stronger position to achieve the remedial purpose of the HPA, which is to eliminate the abusive practice of soring.

We would add a new paragraph (a)(1) to § 11.2 that prohibits any action device and a new paragraph (a)(2) that prohibits hoof bands, wedges, and pads at any horse show, exhibition, sale, or auction. We would also remove current paragraphs (b)(1) through (b)(8). These paragraphs provide for restrictions regarding action devices and pads.

Current paragraph (b)(9) of § 11.2 prohibits the use of any weight on yearling horses, excepting a keg or similar horseshoe, and also prohibits horseshoes weighing more than 16 ounces on yearling horses.

We would redesignate paragraph (b)(9) as (a)(3) and replace the term "yearling horses" with "horses up to 2 years old." This change would clarify that horses younger than 1 year old are not yearlings but should be covered under the prohibitions in those paragraphs.

Paragraphs (b)(10) and (11) of § 11.2 currently include requirements for heel/toe ratios. Paragraph (b)(10) prohibits artificial toe lengthening, whether accomplished with pads, acrylics, or any other material, or combinations of these, that exceeds 50 percent of the natural hoof length, as measured from the coronet band, at the center of the anterior pastern along the front of the hoof wall, to the distal portion of the hoof wall at the tip of the toe. The artificial extension must be measured from the distal portion of the hoof wall at the tip of the toe at a 90 degree angle to the proximal hoof surface of the shoe.

We would redesignate paragraph (b)(10) as paragraph (a)(4) and amend it by prohibiting all artificial toe lengthening. Toe lengthening involves the use of pads or foreign substances attached to the hoof, both of which we propose to prohibit.

We would not include the provisions of paragraph (b)(11) of § 11.2 concerning artificial toe length measurements, as artificial toe lengthening would be prohibited under proposed § 11.2(a)(4).

We would remove current paragraph (b)(12) of § 11.2, which contains provisions for hoof pads. Such pads would be prohibited under proposed § 11.2(b)(2).

Paragraph (b)(13) of § 11.2 prohibits the practice of inserting between the horse's hoof and a pad any object or material other than acceptable hoof packing. We would redesignate this paragraph as paragraph (a)(5) and amend it to remove the reference to pads. Acceptable packing would continue to include pine tar, oakum, live rubber, sponge rubber, silicone, commercial hoof packing, or other material that does not create any pain on the frog, sole or any areas underneath the hoof. We also propose to prohibit acrylic and similar materials as hoof packing, as they can harden and cause pressure soring.

Paragraph (b)(14) of § 11.2 prohibits rocker-bars on the bottom surface of horseshoes which would cause, or could reasonably be expected to cause, an unsteadiness of stance in the horse with resulting muscle and tendon strain due to the horse's weight and balance being focused upon a small fulcrum point. We would retain the prohibitions in this paragraph, as well as the footnote allowing certain corrective devices for the purpose of correcting a lameness or pathological condition of the foot. We would redesignate paragraph (b)(14) as paragraph (a)(6).

We would remove paragraphs (b)(15) through (17) of § 11.2, which provide conditions for the use of hoof bands and action devices. Under the proposed regulations, all hoof bands and action devices would be prohibited at any horse show, horse exhibition, or horse sale or auction. Hoof bands are known to cause pressure on the wall of the hoof and overtightening of the bands has been difficult to monitor and detect.

Paragraph (b)(18) of § 11.2 currently prohibits any manner of shoeing or trimming a horse's hoof that will cause suffering, pain or distress, inflammation, or lameness when the animal is walking, trotting, or otherwise moving.

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[9] **Federal Register** (44 FR 25172–25184), April 27, 1979.

We propose to redesignate paragraph as (b)(18) as (a)(7) and amend it by adding prohibitions on paring out the frog and intentional bruising of the hoof, and adding that horses showing any other indications of pressure shoeing are considered sore and subject to all the prohibitions in the Act. These practices can cause soring but are not specifically covered in the current regulations.

Paragraph (b)(19) of § 11.2 currently prohibits lead or other weights to be attached to the outside of the hoof wall, the outside surface of the horseshoe, or any portion of the pad except the bottom surface within the horseshoe. It also states that pads may not be hollowed out for the purpose of inserting or affixing weights, and weights may not extend below the bearing surface of the shoe. Paragraph (b)(19) also prohibits hollow shoes or artificial extensions filled with mercury or similar substances.

We propose to redesignate paragraph (b)(19) of § 11.2 as paragraph (a)(8) and remove references to pads in this paragraph. As we explain above, their use would be prohibited under the proposed regulations at any horse show, horse exhibition, or horse sale or auction. We would also remove the exception that allows the practice of adding weights to the bottom surface within the horseshoe because we have determined that such weights can be used in ways that can cause soring.

Paragraph (c) of § 11.2 currently prohibits application of substances to the extremities above the hoof of any Tennessee Walking Horse, Racking Horse, or related breed while being shown, exhibited, or offered for sale at any horse show, horse exhibition, or horse sale or auction except lubricants such as glycerine, petrolatum, and mineral oil, or mixtures thereof.

Paragraph (c)(1) currently requires that the management agree to furnish all of the lubricants permitted to be applied to horses as noted above and to maintain control over them during their use at the event. Paragraph (c)(2) states that these lubricants can only be applied after the horse has been inspected by management or by a DQP and only under the supervision of the horse show, exhibition, sale, or auction management. Paragraph (c)(3) requires that management make lubricants available to Department personnel for inspection and sampling as deemed necessary.

We would redesignate paragraph (c) as paragraph (b) and revise it to prohibit all substances, including lubricants, on the limbs of any Tennessee Walking Horse, Racking Horse, or related breed while being shown, exhibited, or offered for sale at any horse show, horse exhibition, or horse sale or auction. This prohibition would apply to any and all horses present on the grounds of a horse show, exhibition, sale or auction. We are proposing these changes because, as we explain above, our experience in enforcing the Act has shown that a wide range of foreign substances have historically been applied to the legs and pasterns of gaited horses to induce soreness. Numbing substances are also applied to a sored horse to temporarily mask the pain of being palpated during inspection.

We would also remove paragraphs (c)(1) through (3). These paragraphs address provisions for lubricants, which are typically used to reduce the friction of action devices. However, as we propose to prohibit all action devices there is no longer a need for such lubricants.

Paragraph (d) of § 11.2 provides specific requirements for rest periods during horse show and horse exhibition workouts or performances for 2-year-old Tennessee Walking Horses, Racking Horses, and related breeds and working exhibitions for 2-year-old Tennessee Walking Horses, Racking Horses, and related breeds at horse sales or horse auctions. We would retain these requirements in a revised paragraph (c).

Paragraph (e) of § current 11.2 prohibits persons from failing to provide information or providing false or misleading information when such information is required by the Act or regulations or requested by APHIS representatives. This provision applies to any custodian of any horse shown, exhibited, sold, auctioned, or entered for any of these purposes.

We would move this provision from § 11.2 to revised § 11.4, as this section would specifically include requirements for providing information about the horse.

Scar Rule

The scar rule applies to all horses born on or after October 1, 1975. Horses that do not meet the scar rule criteria are considered to be sore and are subject to all prohibitions of the Act.

Paragraph (a) of § 11.3 states that the anterior and anterior-lateral surfaces of the fore pasterns (extensor surface) are required to be free of bilateral granulomas, other bilateral pathological evidence of inflammation, and, other bilateral evidence of abuse indicative of soring including, but not limited to, excessive loss of hair.

Paragraph (b) states that the posterior surfaces of the pasterns (flexor surface), including the sulcus or "pocket" may show bilateral areas of uniformly thickened epithelial tissue if such areas are free of proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation.

We intend to retain the current scar rule provisions in the regulations.

Providing Required Information

Section 11.4, "Inspection and detention of horses," lists the inspection and detention requirements that custodians of a horse must meet upon request by an APHIS representative. We would revise § 11.4 by moving the inspection and detention requirements to a revised § 11.5 and amending those requirements to reflect changes made to other sections. We would also change the section heading of revised § 11.4 to "Providing required information" and add to that section the provision regarding failure to provide information or providing false information currently in § 11.2(e). This provision prohibits an individual from refusing to provide information or providing false or misleading information when such information is required by the Act or regulations or requested by inspectors or APHIS representatives. It applies to any custodian of any horse shown, exhibited, sold, or auctioned at any horse show, exhibition, sale, or auction.

Inspection and Detention of Horses: Responsible Parties

Section 11.5 currently includes the requirement that show management and custodians of horses at any horse show, exhibition, auction, or sale must provide access for APHIS representatives and DQPs to visually and physically inspect horses and records.

We would move the access requirements for show management in current § 11.5(a) to proposed § 11.9 so that all such requirements for show management are together in one section. We would also move horse inspection and detention requirements for custodians of horses from current § 11.4 into revised § 11.5 and retain the access requirements pertaining to custodians of horses currently in § 11.5 so that all such requirements for these persons relating to access, inspection, and detention are located in one section. Revised § 11.5 would be retitled "Inspection and detention of horses; responsible parties."

We would combine the first sentence of current § 11.5(b)(1) and the second through last sentences of current § 11.4(a) to create paragraph (a) of revised § 11.5. These sentences contain inspection requirements for custodians of horses at horse shows, exhibitions, sales, and auctions.

Paragraph (b) of revised § 11.5 would be drawn from current § 11.5(b)(2), which requires that the custodian of a horse promptly present it for inspection upon notification by any APHIS representative or authorized inspector to determine compliance with the Act and regulations.

Paragraph (c) of revised § 11.5 would state that no objects or tack other than a halter is to be placed on a horse during inspection. We would add this requirement because other objects can be used to train a sored horse to show no visible reaction to pain when its hooves and limbs are palpated during inspection.[10]

With minor changes, the content we would include in paragraphs (d) through (k) of revised § 11.5 would be drawn from the content in current § 11.4(b) through § 11.4(i), which list horse inspection and detention requirements pertaining to custodians of horses subject to inspection.

Paragraph (f) of current § 11.4 states that it is APHIS' policy to inform the owner, trainer, exhibitor, or other custodian of any horse allegedly found to be in violation of the Act or the regulations of the alleged violation before the horse is released by an APHIS representative. We would add language to indicate that the APHIS representative would inform the custodian of a horse of the alleged violation and move the content to paragraph (h) of revised § 11.5.

We would move the contents of paragraphs (e)(2) and (h)(1) and (2) of current § 11.4 to new paragraphs (g)(2) and (j)(1) and (2) of revised § 11.5, respectively, in order to draw together similar inspection and detention requirements. We would also replace the term "APHIS Show Veterinarian" with "APHIS representative" wherever it occurs in those paragraphs for the reasons explained above under "Definitions."

Consolidation of Inspection Space and Facility Requirements

Section 11.6 currently contains horse inspection space and facility requirements for management of a horse show, exhibition, sale, or auction. Under the current requirements, management must provide sufficient space and facilities for inspectors and APHIS representatives to perform their duties under the Act and regulations. These requirements include ensuring that inspectors and APHIS representatives who inspect horses are provided with a safe area (for example, a well-defined inspection area where inspectors are free from potential harm) to conduct inspections and protection from the elements, and that there are separate waiting areas for horses awaiting inspection and horses that the inspector determines should be detained.

In order to consolidate management-specific inspection space and facility requirements, we propose moving these requirements from current § 11.6 to proposed § 11.9, "Management responsibilities; access, space, and facilities."

Training and Licensing of DQPs[11]

DQPs conduct inspections of horses at shows, sales, auctions, and exhibitions under procedures set out in § 11.21 of the regulations. That section provides instructions on how to visually and physically detect and diagnose soring in horses, requires the inspecting DQP to ensure that no devices and methods used on the horse are prohibited under § 11.2, and sets out the conditions under which horses must be inspected. Under the current DQP program, DQPs are certified, hired, paid, and, if necessary, disciplined by HIOs. APHIS certifies HIOs subject to their meeting the requirements under § 11.7 of the regulations for licensing and training, recordkeeping and reporting, and standards of conduct, and monitors them for compliance with these requirements.

As we have noted, the OIG report cited conflicts of interest between DQPs, the HIOs that maintain training and licensing programs, and management of horse shows and exhibitions that affiliate with the HIOs. The report's findings and our own experience with the DQP program indicate that the current program facilitates conflicts of interest between HIOs and DQPs that contribute to the persistence of soring in the gaited horse industry. DQPs under HIO supervision have a long history of allowing horses to pass inspection despite indicators of soring. The report recommended that APHIS undertake training and licensing of horse inspectors in order to ensure that inspection techniques are correctly and consistently applied by inspectors working independently of the horse industry.

Inspection data compiled by APHIS suggests that inadequate inspections by DQP at HPA-covered events has resulted in underreporting of sored horses when APHIS inspectors are not in attendance. This is consistent with the findings of the 2010 OIG report on the horse protection program, which noted that, on average, DQPs issued 49 percent of their total violations at the small number of shows at which APHIS was also present.[12] In the data set OIG reviewed, OIG found APHIS attended 108 shows out of 1,607 shows where DQPs provided inspection services. With respect to inspection findings, OIG found that DQPs reported 1,409 alleged HPA violations at the 108 shows where APHIS was also present, compared to 1,620 alleged HPA violations at the 1,499 shows where APHIS was not present.

Table 1 shows inspection data compiled by APHIS from fiscal years (FY) 2010 to 2015. During this period, APHIS attended about 18 percent of all HPA-covered events featuring Tennessee Walking Horses, Racking Horses, or related breeds at which horse industry DQPs conducted inspections. The data indicates that while APHIS attended only a fraction of the events at which DQPs were retained to inspect horses, APHIS consistently reported higher rates of noncompliance based on Veterinary Medical Officer inspection findings. In FY 2015, for example, APHIS detected 509 instances of noncompliance with the HPA at the 62 shows APHIS attended. Of the 278 shows DQPs attended during the same time frame, DQPs detected just 228 instances of noncompliance with the HPA. From FY 2010 through FY 2015, the statistics show DQPs identify noncompliance at a lower rate compared to APHIS Veterinary Medical Officers. While the trend in the number of noncompliance detected by DQPs has steadily fallen between FY 2010 and FY 2015, APHIS' detection of noncompliance has remained relatively stable. This further suggests some of the potential deficiencies of the existing DQP program.

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[10] As noted in the OIG report (see footnote 6), such distractions are part of the practice of stewarding, in which sored horses are forced to stand still for inspection even if they are in pain. Techniques generally involve a stable employee palpating the horse's sored front limbs; if the horse flinches from the pain of soring, another employee injures the horse by hitting it in the head, using a cigarette to burn its tongue, or other painful methods. By associating certain objects with infliction of these methods, the horse eventually learns to stand still for the lesser pain of inspection. To cite one instance of stewarding, Chris Zahnd was the owner and operator of Swingin' Gate Stables, located in Trinity, Alabama, and trained, boarded, and showed Tennessee Walking Horses. On July 4, 2009, at the Woodbury Lions Club Horse Show, a horse trained and stabled by Zahnd was discovered to be wearing a nerve cord—in this case, a plastic zip tie that distractingly stimulated the horse's gums—in its mouth and was determined to be bilaterally sore by an inspector. At a plea hearing, Zahnd admitted to soring violations prohibited by the Horse Protection Act: *http://www.justice.gov/archive/usao/tnm/pressReleases/2011/12-9-11.html.*

[11] As noted in footnote 1, Designated Qualified Person (DQP) would be changed to Horse Protection Inspector (HPI) under the proposed regulations.

[12] See footnote 6. OIG's data review and table is found on page 11 of the audit report.

TABLE 1—HPA-COVERED EVENTS INSPECTION DATA FROM FY 2010–2015

FY	Shows attended by APHIS	Noncompliance detected by APHIS	Shows attended by DQPs	Noncompliance detected by DQPs	Foreign substance testing (positive finding/number tested)
FY 2015	62	509	278	228	500/768
FY 2014	61	579	365	355	107/203
FY 2013	74	409	365	529	195/314
FY 2012	103	688	427	790	309/478
FY 2011	82	672	461	1131	184/189
FY 2010	54	498	373	1214	312/363

While we propose to eliminate the existing DQP program and replace it with a program of independent, APHIS-licensed and trained inspectors (see section below titled "Training and Licensing of DQPs"), we also propose to reduce instances of soring by addressing the means by which horses are sored.

The regulations currently allow the use of a chain or other action device on each limb of a horse if the device weighs 6 ounces or less. In prior rulemakings, APHIS has received a range of comments from members of the gaited horse industry, veterinary professional organizations, animal advocates, and the general public regarding the purposes and effects of such devices, and whether there are minimum weights below which such devices will not cause lesions that constitute soring. We have observed, however, from our direct experience in enforcing the Act and regulations over many years that chains, rollers, and similar devices placed on a horse's feet, when used in combination with prohibited foreign substances applied to the pasterns of a horse, can create lesions and inflammation that constitute soring. When such substances are used, we have diagnosed soring in horses that have worn chains under 6 ounces and other devices allowed in the current regulations. Although our experience enforcing the HPA indicates that soring occurs when action devices are used alone or in combination with prohibited foreign substances, we welcome public comment, supported with scientific data or other information, on whether action devices used alone or in combination with other training methods may result in soring.

In table 1 above, the right column shows the number of horses tested by APHIS for prohibited foreign substances and the number of horses shown to be positive for such substances from FY 2010 through 2015. In FY 2015, for example, 500 horses were positive out of 768 tested, and over the 5 year period the average rate of positives was 69 percent. All of the horses testing positive for foreign substances wore action devices while being shown or exhibited. Prohibited foreign substances applied to these horses include masking and numbing agents that temporarily block the pain of soring so inspectors cannot detect pain upon inspection.

A study[13] conducted at the Auburn University School of Veterinary Medicine from 1978 to 1982 ("the Auburn study") suggests a strong relationship between soring and the combined use of action devices and substances. Moreover, our observations from over three decades of administering and enforcing the Act indicate that soring does occur with the use of irritating foreign substances and 6 ounce action devices.

As noted above, the foreign substances data in table 1, averaged over a 6 year period, indicate that 71 percent of substance samples taken from the limbs of horses tested positive for prohibited substances. These substances include mustard oil and detergents, both of which, as demonstrated in the Auburn study, resulted in soring. Prohibited substances also included local anesthetic agents such as benzocaine and lidocaine to deter detection of soring upon evaluation, as well as dyes and paints to cover lesions that would indicate noncompliance with the scar rule.

Of the alleged show violations found from FY 2010 through 2015 with APHIS representatives present, many of these alleged violations involved the failure to comply with the scar rule. The high number of horses found noncompliant with the scar rule that also tested positive for foreign substances suggests that the use of 6 ounce action devices currently allowed under the regulations are resulting in soring and that horses continue to endure this abusive and cruel practice.

Our experience at horse shows and exhibitions also indicates that soring has continued to occur through the use of hoof pads (also referred to as performance packages). Research undertaken in the Auburn study indicated that raising a horse's heels through the use of pads alone resulted in swollen flexor tendons and signs of inflammation. About 90 percent of the alleged violations documented at shows from FY 2010 through 2015 involved horses wearing pads. Pads used in performance packages can conceal objects that produce pain or be designed to cause the horse's hoof to strike the ground at an abnormal angle in order to produce pain on stepping, resulting in an exaggerated gait.[14]

Therefore, because the existing regulatory structure, which requires HIOs to hire and train inspectors to identify sore horses at industry-sponsored events, has not been effective in eliminating the practice of soring, we propose to revise the regulations so that APHIS assumes all regulatory responsibility for training and licensing of third-party inspectors. We would include these regulations in a revised § 11.6, which we propose to title as "Training and licensing of Horse Protection Inspectors (HPIs)." As HIOs would no longer be responsible for training and licensing inspectors and enforcing penalties, we would relieve HIOs of all regulatory burdens and requirements assigned to them in the regulations.

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[13] *Thermography in Diagnosis of Inflammatory Processes in Horses in Response to Various Chemical and Physical Factors: Summary of the Research from September 1978 to December 1982.* Submitted to the U.S. Department of Agriculture by Dr. Ram C. Purohit, Associate Professor, Department of Large Animal Surgery and Medicine, School of Veterinary Medicine, Auburn University.

[14] On April 26, 2011, a Federal grand jury in Chattanooga, TN returned a 34-count indictment against Barney Davis, charging him with violations of the Horse Protection Act and related financial crimes because he screwed bolts and other hard objects against the soles of horse's hoofs to produce pain to alter the gait of a horse. As part of his sentencing, Davis was ordered to help produce an educational video (*https://youtu.be/vZTIbwaibOE*) showing soring methods and demonstrating how inspectors can better detect sored horses. In the video, Davis described mechanical devices and chemical irritants used to sore horses and showed examples of chains, bolts, blocks, and eight-pound tungsten shoes used to cause a gaited horse to adopt an exaggerated gait for the show ring. Davis stressed the pervasiveness of soring in the gaited horse industry and testified that horses "have got to be sored to walk," referring to the exaggerated gait displayed in the show ring. See *http://www.justice.gov/archive/usao/tne/news/2011/November/110811%20Horse%20Soring%20Guilty%20Plea.html.*

We would add an introductory paragraph to revised § 11.6. That paragraph would state that APHIS will train and license HPIs and reiterate the current policy in § 11.7(a) that allows the management of any horse show, horse exhibition, horse sale, or horse auction to engage inspectors holding a valid, current license under section 4 of the Act, and to appoint and delegate authority to inspectors to detect or diagnose horses that are sore or to otherwise inspect horses and records for the purposes of determining compliance with the Act. While HPIs would be bound by APHIS requirements regarding his or her duties and responsibilities, HPIs would not be employed or reimbursed by APHIS for their inspections but would contract directly with show management. The introductory paragraph would state that show management may engage one or more HPIs from the list of APHIS trained and licensed HPIs by contacting them directly. A list of licensed HPIs would be made available on the APHIS Horse Protection Program Web site.

We would remove the statement in paragraph § 11.7(a)(1)(iii) that accredited Doctors of Veterinary Medicine who meet these qualifications "may be licensed as DQPs by a horse industry organization or association whose DQP program has been certified by the Department under this part without undergoing the formal training requirements set forth in this section." APHIS would be the entity licensing qualified veterinarians and veterinary technicians as inspectors under the revised regulations.

We would also remove the provision in current § 11.7(a)(2) that farriers, horse trainers, and other knowledgeable horsemen can be qualified as DQPs if their past experience and training qualifies them for positions as horse industry organization or association stewards or judges (or their equivalent) and if they have been formally trained and licensed as DQPs by a horse industry organization or association. Instead, we would state in paragraph (a) of revised § 11.6 that only veterinarians and veterinary technicians may be licensed as HPIs. We are making this change to ensure that inspectors have the professional education, working knowledge, technical and practical experience, and training necessary to inspect horses properly under the Act and regulations.

In the case of veterinarians, paragraph (a)(1) would state that they would need to have extensive knowledge and experience of equine husbandry and science defined as understanding the anatomy, selection, breeding, care, and maintenance of horses, and applicable principles of equine science, welfare, care, and veterinary health and be eligible to be licensed as HPIs under paragraph (b) of § 11.6. They would also have to be accredited in any State by the United States Department of Agriculture under 9 CFR part 161 and be: Members of the American Association of Equine Practitioners, or large animal practitioners with substantial equine experience, or knowledgeable in the area of equine soring and soring practices (for example, Doctors of Veterinary Medicine with a small animal practice with sufficient knowledge of horses, or Doctors of Veterinary Medicine who teach equine-related subjects in an accredited college or school of veterinary medicine).

Paragraph (a)(2) would state that veterinary technicians with degrees awarded by educational programs accredited by the American Veterinary Medical Association Committee on Veterinary Technician Education and Activities could also be licensed as HPIs if they possess knowledge and experience of equine husbandry and science and are eligible to be licensed as HPIs under the requirements in paragraph (b) of § 11.6.

Paragraph (b) of current § 11.7 provides certification requirements for DQP programs maintained by horse industry organizations or associations. As the task of training and licensing inspectors in such programs would shift to APHIS under the proposed regulations, these program requirements would be removed.

Paragraph (c)(4) of current § 11.7 states that each horse industry organization or association receiving Department certification for the training and licensing of DQPs under the Act shall not license any person as a DQP if such person has been found in violation of the Act or regulations occurring after July 13, 1976, (the date of enactment of the last major statutory change to the HPA) or paid any fine or civil penalty in settlement of any proceeding regarding a violation of the Act or regulations occurring after that date, for a period of at least 2 years following the first violation and at least 5 years following any subsequent violation.

We would include a similar provision in paragraph (b)(1) of revised § 11.6 stating that APHIS will not license any person as a HPI if that person has been convicted or found to have violated any provision of the Act or the regulations in 9 CFR part 11 occurring after July 13, 1976, or has been assessed any fine or civil penalty, or has been the subject of a disqualification order in any proceeding involving an alleged violation of the Act or regulations occurring after July 13, 1976. However, in order to ensure that any person who has been found in violation of the Act or has been the subject of an order assessing a fine or civil penalty or imposing a disqualification period to resolve alleged violations of the Act is not granted a license to inspect horses, we would not include the current 2- and 5-year limitations for violators. In other words, a person who has been found in violation of the Act or subject to an order assessing a fine or civil penalty or imposing a disqualification period would not be allowed to be a HPI.

We would include in paragraph (b)(2) of revised § 11.6 a restriction against licensing any person as a HPI if that person, any members of that person's immediate family, or that person's employer participates in the showing of horses or acts as a judge, a farrier, or as show management involving any Tennessee Walking Horses, Racking Horses, or related breeds, or as determined by the Administrator of APHIS.

Proposed paragraph (b)(3) would state that APHIS will not license any person as a HPI if that person has been disqualified by the Secretary of Agriculture from making detection, diagnosis, or inspection for the purpose of enforcing the Act. This restriction is adapted from current paragraph (c)(6) of § 11.7.

Paragraph (b)(4) of revised § 11.6 would contain the restriction that APHIS will not license any person as a HPI if the professional integrity, reputation, honesty, practices, and reliability of the person do not support a conclusion that the applicant is fit to carry out the duties of a HPI. The information that APHIS would consider in reaching a conclusion would include: Criminal conviction records; official records of the person's actions while participating in Federal, State, or local veterinary programs; judicial determinations in any type of litigation, and any other evidence that reflects on the integrity, reputation, honesty, practices, and reliability of the person.

Paragraph (c) of current § 11.7 lists requirements that must be met by each HIO that receives APHIS certification for training and licensing DQPs. We would remove these requirements from the regulations, as HIOs will no longer train and license inspectors or be certified by APHIS.

Under paragraph (c)(1) of revised § 11.6, persons wishing to become a HPI would have to submit an application to APHIS and show that they satisfy the requirements we propose in paragraphs (a) and (b) of revised § 11.6. If accepted, HPI candidates would have to complete a formal training program administered by APHIS that includes instruction on: The anatomy and physiology of the limbs of a horse; the Act and the regulations; the history of soring and procedures necessary to detect soring; practical instruction using live horses; HPI standards of conduct, and recordkeeping requirements and procedures. Training would be delivered regionally and utilize distance learning whenever possible to minimize expenses for attendees and APHIS.

Once the HPI candidate successfully completes the formal training program required in proposed paragraph (c)(1) and passes a written examination, proposed paragraph (c)(2) provides that he or she would be granted a license for 1 year. Licenses would terminate after 1 year and all HPIs would be required to reapply if they wish to be licensed another year.

Paragraph (d) of § 11.7 currently provides requirements to be met by DQPs and HIOs. We would remove these requirements from the regulations and propose inspector requirements in a revised paragraph § 11.6(d), titled "Requirements to be met by HPIs." A description of the inspector requirements we propose in § 11.6(d) follows our summary of current § 11.7(d).

Paragraph (d)(1) of § 11.7 currently requires that DQPs keep and maintain information and records concerning any horse which the DQP recommends be excused for any reason from being shown, exhibited, sold or auctioned, in a uniform format required by the horse industry organization or association that has licensed the DQP. This information includes: The name and address of the horse owner, exhibitor, and trainer; the horse's exhibit, sale, or auction tag number; the date and time the horse was inspected; a detailed description of all of the DQP's findings and the nature of the alleged violation, or other reason for prohibiting the horse; name, age, sex, color, and markings of the horse, and the name of the show manager or other management representative notified by the DQP that such horse should be excused, and whether such manager or management representative excused such horse.

Paragraph (d)(2) of current § 11.7 requires that the DQP inform the custodian of each horse alleged to be in violation of the Act or its regulations, or excused for any other reason, of such action and the specific reasons for the action.

In paragraph (d)(3) of current § 11.7, each horse industry organization or association having a Department certified DQP program is currently required to submit a report to the Department that includes information about the identity of all horse shows, horse exhibitions, horse sales, or horse auctions that have retained the services of DQPs licensed by the organization or association during the month covered by the report.

In paragraph (d)(4) of current § 11.7, each horse industry organization or association having a Department certified DQP program has to provide to the trainer and owner of each horse allegedly in violation of the Act, or otherwise excused for any reason, the name and date of the show, exhibition, sale, or auction, as well as the name of the horse and the reason why the horse was excused or alleged to be in violation of the Act or its regulations.

Paragraph (d)(5) of current § 11.7 states that each horse industry organization or association having a Department certified DQP program has to provide its licensed DQPs with a current list of all persons that have been disqualified by order of the Secretary from showing or exhibiting any horse, or judging or managing any horse show, exhibition, sale, or auction.

Under our proposed changes, APHIS would make this list of disqualified persons available to HPIs and show management of any horse show, sale, exhibition, and auction.

Paragraph (d)(6) of current § 11.7 states that each horse industry organization or association having a Department certified DQP program must develop and provide a continuing education program with not less than 4 hours of instruction per year to each licensed DQP.

As we propose that APHIS would develop and provide an education program for HPIs, we would remove this particular requirement from the proposed regulations.

In paragraph (d)(7) of current § 11.7, each HIO having a Department certified DQP program must promulgate standards of conduct for its DQPs and provide administrative procedures for initiating, maintaining, and enforcing such standards, including the causes for and methods to be utilized for canceling the license of any DQP.

We are removing these and all other HIO-related requirements from the regulations because HIOs would no longer be training or licensing inspectors. As indicated in proposed § 11.6(c)(1), APHIS would provide instruction on standards of conduct for HPIs.

In proposed paragraph (d)(1) of revised § 11.6, drawn from current § 11.7(d)(1), we would require that any licensed HPI appointed and retained by the management of a horse show, exhibition, sale, or auction to inspect horses for the purpose of determining compliance with the Act and regulations must collect and maintain the following information and records concerning any horse which the HPI recommends be prohibited for any reason from such horse show, exhibition, sale or auction, from being shown, exhibited, sold, or auctioned: Names and addresses, including street address or post office box number and ZIP Code, of the show and show manager, horse owner, trainer, farrier, exhibitor; exhibitor number and class number, or the sale or auction tag number of the horse; date and time of inspection; detailed description of all of the HPI's findings and the nature of the alleged violation, or other reason from prohibiting the horse, including the HPI's statement regarding the evidence or facts upon which the HPI recommended that show management disqualify a horse; name, registration number (if the horse is registered), age, sex, color, and markings of the horse; and the name or names of the show manager or other management representative notified by the HPI that such horse should be prohibited from participating and whether or not such show management prohibited such horse.

In proposed paragraph (d)(2) of revised § 11.6, drawn from current § 11.7(d)(2),we would require that copies of records be submitted by the HPI to show management and to APHIS within 72 hours of conclusion of the horse show, exhibition, sale, or auction.

Paragraph (d)(3) of revised § 11.6 would require that the HPI, after completing the inspection, inform the custodian of each horse found noncompliant with the Act or its regulations, or prohibited for any other reason, of such action and the specific reasons for such action. The HPI would collect the information related to the alleged violation from the custodian.

Paragraph (d)(4) of revised § 11.6 would require that the HPI immediately inform show management of each case regarding the custodian of any horse that is found to be noncompliant with the Act or its regulations.

Paragraph (e) of current § 11.7 states that the management of any horse show, horse exhibition, horse sale, or horse auction must not appoint any person to detect and diagnose horses which are sore or to otherwise inspect horses for the purpose of enforcing the Act, if that person: Does not hold a valid, current DQP license issued by a horse industry organization or association having a DQP program certified by the Department; has had his DQP license canceled by the licensing organization or association; is disqualified by the Secretary from performing diagnosis, detection, and inspection under the Act, after notice and opportunity for a hearing, when the Secretary finds that such person is unfit to perform such diagnosis, detection, or inspection because he has failed to perform his duties in accordance with the Act or regulations; or because he has been convicted of a violation of any provision of the Act or regulations occurring after July 13, 1976, or has paid any fine or civil penalty in settlement of any proceeding regarding a violation of the Act or regulations occurring after July 13, 1976. In accordance with proposed § 11.10(c)(1), persons appointed by management to inspect horses to detect or diagnose indications of soring would be required to hold a valid, current license issued by APHIS for that purpose.

In current paragraph (f) of § 11.7, each HIO or association having a DQP program certified by the Department must issue a written warning to any DQP whom it has licensed who violates the rules, regulations, by-laws, or standards of conduct promulgated by such HIO or association under § 11.7, who fails to follow the procedures in § 11.21, or who otherwise carries out his duties and responsibilities in a less than satisfactory manner. The HIO must also cancel the license of any DQP after a second violation. In addition, each HIO or association having a Department certified DQP program must cancel the license of any DQP licensed under its program if that person has been convicted of a violation of the Act or the regulations in 9 CFR part 11 occurring after July 13, 1976, or paid any fine or civil penalty in any proceeding in which a violation of the Act or regulations was found in a final unappealable decision occurring after July 13, 1976.

As HIOs would no longer administer inspector training and licensing under our proposal, we would remove the provisions in § 11.7(f) from the regulations. Instead, we would replace them with provisions for APHIS to issue warnings to HPIs and deny or revoke HPI licenses.

Under paragraph (e) of proposed § 11.6, APHIS may deny or revoke a license for any of the reasons outlined in § 11.6(b), and will revoke the license of any HPI who fails to follow the inspection procedures set forth in § 11.12, or who otherwise carries out his or her duties and responsibilities in a less than satisfactory manner. Upon denial or revocation of a license, the applicant or HPI may appeal the revocation to the Administrator within 30 days from the date of such decision, and the Administrator would make a final determination in the matter. If the Administrator upholds the denial or revocation of the license, the applicant or HPI would be given notice and opportunity for a hearing. Hearings will be in accordance with the Uniform Rules of Practice for the Department of Agriculture in 7 CFR 1.130 *et seq.* The license denial shall remain in effect until the final legal decision has been rendered.

Paragraph (g) of current § 11.7 states that any HIO or association having a Department certified DQP program that has not received Department certification of the inspection procedures provided for in § 11.7(b)(6), or that otherwise fails to comply with the requirements contained in part 11, may have certification of its DQP program revoked, unless upon written notification from the Department of failure to comply with the requirements in this section, the organization or association takes immediate action to rectify such failure and takes appropriate steps to prevent a recurrence of such noncompliance within the time period specified in the Department notification, or otherwise adequately explains such failure to comply to the satisfaction of the Department.

We would remove the requirements in § 11.7(g), as HIOs would no longer be administering inspector training and licensing programs. We would add provisions in paragraph (f) of revised § 11.6 for the status of persons who have been licensed as inspectors prior to the effective date of this rule. Inspectors licensed as DQPs prior to the effective date of this rulemaking would no longer be allowed to perform inspection duties under that license after the effective date. DQPs seeking to become inspectors after the effective date of this rulemaking would need to apply for a license and fulfill all HPI eligibility requirements included in § 11.6.

HIO Certification and Responsibilities

Current §§ 11.7, 11.23, and 11.41 contain requirements for HIOs interested in applying for Department certification of a DQP training program and maintaining the program in good standing. As stated above, we propose to remove from the regulations all regulatory requirements for HIOs. HIOs would no longer be subject to any of the regulations pertaining to them in part 11, nor would they have the regulatory responsibility to train or license HPIs or enforce penalties. Under the proposed changes, HIOs could still affiliate with shows, auctions, and other horse-centered events, train judges, maintain registries, and engage in other activities that promote the horse industry.

Management Responsibilities

Access, Space, and Facilities

In proposed § 11.9, we would consolidate and revise the show management responsibilities pertaining to inspector access, space, and facilities currently in §§ 11.5, 11.6, and 11.20.

Paragraph (a) of proposed § 11.9 would include requirements regarding access to premises for inspection of horses and records. In proposed § 11.9(a)(1), we would include the requirement from current § 11.5(a)(1) that the management of any horse show, horse exhibition, or horse sale or auction must, without fee, charge, assessment, or other compensation, provide authorized HPIs and APHIS representatives with unlimited and unrestricted access to the grandstands, sale ring, barns, stables, grounds, offices, and all other areas of any horse show, exhibition, sale, or auction. This requirement includes any adjacent areas under their direction, control, or supervision for the purpose of inspecting any horses, or any records required to be kept by regulation or otherwise maintained.

In paragraph (a)(2) of proposed § 11.9, drawn from current § 11.5(a)(2), we would require that the management of any horse show, exhibition, or sale or auction must, without fee, charge, assessment, or other compensation, provide authorized HPIs and APHIS representatives with an adequate, sufficient, safe, and accessible area for the visual inspection and observation of horses while such horses are competitively or otherwise performing at any horse show or exhibition. This requirement also applies while such horses are being sold or auctioned, or offered for sale or auction.

In paragraph (b) of proposed § 11.9, we would include space and facility requirements drawn from current § 11.6

for the management of any horse show, exhibition, sale, or auction. Management would be required to provide, without fee, charge, assessment, or other compensation, adequate, sufficient, safe and accessible space and facilities for authorized HPIs and APHIS representatives to carry out such duties under the Act and regulations whether or not management has received prior notification or otherwise knows that the show may be inspected by APHIS.

In paragraph (b)(1) of proposed § 11.9, drawn from paragraph (a) of current § 11.6, we would require sufficient space in a convenient location to the horse show, exhibition, sale, or auction arena, acceptable to authorized HPIs or APHIS representatives, in which horses may be physically, thermographically, or otherwise inspected for soring.

In paragraph (b)(2) of proposed § 11.9, drawn from current § 11.6(b), we would require that management provide protection from the elements of nature, such as rain, snow, sleet, hail, and wind for the inspection space. While current § 11.6(b) requires such protection only if requested by an inspector or an APHIS representative, we would require it at every event as it may not be possible to perform accurate inspections under exposure to the elements, as well as to permit last minute or unannounced inspections.

In paragraph (b)(3) of proposed § 11.9, drawn from paragraph (c) of current § 11.6, we would require that management maintain control of crowds or onlookers in order that authorized HPIs and APHIS representatives may carry out their duties safely and without interference. We are seeking public comment on instances in which it would it be necessary to hire security personnel to protect HPIs.

Paragraph (b)(3)(i) of proposed § 11.9 would require that management ensure that each horse in the designated inspection and warm-up areas be accompanied by no more than three individuals, including the trainer, rider, and the custodian. Official guests of show management, such as elected officials, legislators, and technical advisers would be allowed access to the designated inspection and warm-up areas for limited periods of time at the discretion of show management and only with the concurrence of an authorized HPI or APHIS representative. Our experience has shown that people congregating in designated inspection and warm-up areas can impede the ability of inspectors and APHIS representatives to perform their duties, and could be used to attempt to intimidate the inspectors and/or APHIS representatives.

Paragraph (b)(3)(ii) of proposed § 11.9 would require that management must not in any way influence show attendees to assault, resist, oppose, impede, intimidate, or interfere with authorized HPIs or APHIS representatives. If management influences attendees in such a manner, HPIs and APHIS representatives would immediately stop conducting inspections at the event and document the events, which may result in a potential investigation or enforcement action against management.

In proposed paragraph (b)(4), we would require that management provide an accessible, reliable, and convenient 110-volt electrical power source for the inspection space if requested by an authorized HPI or APHIS representative. Paragraph (d) of § 11.6 currently stipulates that this is a requirement only if electrical service is available. We would retain this requirement in the regulations. If electrical service is not available, management would be required to provide a portable electric generator as requested by the inspector of APHIS representatives.

In proposed paragraph (b)(5), we would adopt the requirement from current § 11.6(e) that management provide appropriate areas adjacent to the inspection area for designated horses to wait before and after inspection and an area to be used for detention of horses.

Operation of Horse Shows, Exhibitions, Sales, and Auctions

We also propose to add a new § 11.10 that contains management operating requirements for horse shows, exhibitions, sales, and auctions. Our experience, which is corroborated by the OIG report, is that current operating requirements are insufficient to enforce prohibitions on persons who have been disqualified from participation in horse shows, exhibitions, sales, and auctions. In proposing these management operating requirements, we intend to make it easier to identify persons who are disqualified from participating in regulated horse shows, exhibitions, sales, and auctions.

In paragraph (a)(1) of proposed § 11.10, we would require that the management of any horse show, horse exhibition, or horse sale or auction involving Tennessee Walking Horses, Racking Horses, and related breeds notify the Administrator of the event at least 30 days before it begins. We would stipulate that notification may be made by mail, fax, or electronic means such as email, but that notification through electronic means is strongly preferred.[15] Notification must include: The name and location of the show, exhibition, sale, or auction; the name and address of the manager; a phone number and email address (if available); the date or dates of the show, exhibition, sale, or auction; and a copy of the official horse show, horse exhibition, horse sale, or horse auction program, if any such program has been prepared. Notification would also have to include the names of the APHIS-licensed HPIs scheduled to perform inspections at the horse show, exhibition, sale, or auction.

In paragraph (a)(2) of proposed § 11.10, we would require management to ensure that no action devices or substances prohibited under § 11.2 are present in the warm-up area.

We would require in paragraph (a)(3) of proposed § 11.10 that management post the list of people who have been disqualified by USDA in a prominent place at the event. We would require in paragraph (a)(4) of proposed § 11.10 that management check the people entering horses in the horse show, exhibition, sale, or auction against the list of people noted in paragraph (a)(3) who have been disqualified and prevent them from entering their horses if they are on the list.

Finally, in paragraph (a)(5) of proposed § 11.10, we would require that management ensure that all horses entered in the horse show, exhibition, sale, or auction be properly identified by one of the following methods: A description sufficient to identify the individual equine, as determined by APHIS, to include name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (*e.g.*, brands, tattoos, scars, cowlicks, or blemishes); electronic identification that complies with ISO 11784/11785;[16] an equine passport issued by a State government and accepted in the government of the State in which the horse show, exhibition, sale, or auction will occur; or digital photographs sufficient to identify the individual equine, as determined by an authorized HPI or an APHIS representative. Additionally, if any such horses belong to a registry, the registry number and registry records would have to be provided to an authorized HPI and/or APHIS representative upon request. In addition, APHIS may add at its discretion additional forms of identification.

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[15] Email notification may be sent to *hp@aphis.usda.gov.*

[16] An international standard regulating the radio frequency identification (RFID) of animals.

As indicated in current § 11.20, the management of a horse show, exhibition, sale or auction is not required to designate and appoint inspectors to conduct inspections. However, under the requirements in paragraph (b) of proposed § 11.10, which are similar to those currently in § 11.20, management not using an inspector from the list of APHIS-trained and licensed inspectors would themselves be responsible for identifying and prohibiting any horses which are sore from participating or competing in any horse show, exhibition, sale, or auction. In the event that show management either does not hire inspectors or hires inspectors that are not licensed by APHIS, show management can be held liable for the failure to disqualify a sore horse from participating in an HPA-covered event. If they do choose to use APHIS-licensed inspectors, show management can only be found liable if they fail to disqualify a horse that an APHIS-licensed inspector or APHIS identifies as a sore horse and notifies show management. Horses entered in a sale or auction would have to be identified as sore prior to the sale or auction and prohibited from entering the ring. Sore horses that have been entered in a show or exhibition for the purpose of showing or exhibition would have to be identified and disqualified by management. Any horses found to be sore during participation in the show or exhibition would have to be prohibited from further participation prior to the tying of the class or the completion of the show or exhibition. Show management's failure to prohibit a horse from participating in any of these situations would result in an alleged violation of the Act and regulations.

Under proposed § 11.10(b)(2), copies of the records required under proposed § 11.6(d)(1) would have to be collected and submitted by management to APHIS within 72 hours after the horse show, exhibition, sale, or auction is over. Proposed § 11.10(b)(3) would contain the requirement that after completing inspection, management would notify the custodian of each horse that is noncompliant with the Act or regulations that the horse is disqualified from participating in any show, exhibition, sale or auction, or involved with any other action under the Act or its regulations along with the reasons for such action. Management would have to collect the information relating to the alleged violation from the custodian.

In current § 11.20, only a horse tied first in each Tennessee Walking Horse, Racking Horse, or related breed class or event at any horse show or exhibition has to be inspected after being shown or exhibited to determine if such horse is in compliance with the Act or regulations. We would add this inspection requirement to proposed § 11.10(b) and amend it to state that any horse placing first, second, or third, and any other horses indicated by a HPI or APHIS representative in each Tennessee Walking Horse, Racking Horse, or related breed class or event at any horse show or exhibition, will have to be inspected after being shown or exhibited to determine if such horses are compliant with the Act or regulations. We are proposing this change to improve compliance with the Horse Protection regulations.

At horse shows, exhibitions, sales, and auctions, we would require in proposed § 11.10(c)(1) that management designate and appoint a minimum of two HPIs holding valid, current licenses issued by APHIS. This requirement is drawn from § 11.20(c), which requires that management appoint and designate at least two inspectors when more than 150 horses are entered. However, we would amend this requirement to require that management appoint two HPIs when 150 or fewer horses are entered in an event and more than two HPIs when more than 150 horses are entered. In addition, we would add in proposed § 11.10(c)(1) the requirement that management make a farrier available to assist with inspections at every horse show, exhibition, sale, and auction.

Under proposed § 11.10(c)(2), management would have to accord HPIs access to all records and areas of the grounds of a show, exhibition, sale, or auction and accord the same right to inspect horses and records as is accorded to any APHIS representative under the regulations. Further, management would be prohibited from taking any action which would interfere with or influence a HPI while carrying out his or her duties.[17]

Under proposed § 11.10(c)(3), we would require that after an authorized HPI has completed inspection of a horse, management must prevent tampering with any part of a horse's limbs or hooves in such a way that could cause a horse to be sore.

Under proposed § 11.10(c)(4), we would require that management not dismiss or otherwise interfere with a HPI during the HPI's appointed tour of duty, which is the duration of the show, exhibition, or sale or auction. This includes situations in which management is dissatisfied with the performance of a particular HPI, including disagreement with a HPI's decision that the custodian of a horse is in alleged violation of the Act or regulations. However, if management has reason to believe that a horse is sore but it is not identified as sore by the HPI, management would be required to prohibit that horse from participating. We would state that management should immediately notify the Administrator, in writing, as to why the performance of a HPI was inadequate or otherwise unsatisfactory. Management would have to immediately prohibit from being shown, exhibited, sold, or auctioned any horse alleged by the HPI to be sore or otherwise known by management to be sore in violation of the Act or regulations. Should management fail to prohibit from being shown, exhibited, sold, or auctioned any such horse, management would have to assume full responsibility for and liabilities arising from the showing, exhibition, sale, or auction of such horses.

Finally, under proposed § 11.10(c)(5), we would require that if an authorized HPI or APHIS representative finds any horse to be sore at a show, exhibition, sale, or auction featuring Tennessee Walking Horses, Racking Horses, or related breeds, the management would have to prohibit the horse from competing in that show or exhibition.

Records and Reporting

To improve organization of the regulations, we are proposing to move the records and reporting requirements for management in current §§ 11.22, 11.23, and 11.24 to proposed § 11.11 and amend them.

In proposed § 11.11(a)(1), we would include record requirements for show management adapted from current § 11.22. However, we would require that management maintain all records for a period of at least 6 years, instead of the current 90 days, following the closing date of the show, exhibition, or sale or auction. We are proposing this change to ensure that records remain available for verifying compliance with the Act and regulations. Investigations of suspected cases of soring often take greater than 90 days, so requiring show managers to hold onto records for additional lengths of time would greatly aid these investigations with minimal burden on show managers. We have proposed 6 years, which accounts for the statute of limitations plus an additional year. Investigations and case development on cases involving the HPA can be difficult and the extra time we would require these records to be held would greatly assist our ability to properly enforce the Act. Although the field investigative process may conclude in roughly a year, the administrative (or civil or criminal) enforcement based on the investigation takes many years. Often times, when attorneys review investigative files, they request additional information related to the alleged violation(s) that may have not been collected as part of the initial investigation. We want to ensure the records are preserved so long as the investigation remains open and active, which is the case until APHIS receives a final legal decision on the matter. These records would have to contain the following information:

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[17] A document with side-by-side comparisons of the current duties of inspectors, HIOs, and show management with those proposed in this rulemaking can be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0009.*

- The dates and place of the horse show, exhibition, sale, or auction.
- The name and address (including street address or post office box number, and ZIP Code) of the sponsoring organization.
- The name and address of the horse show, exhibition, sale, or auction management.
- The name and address (including street address or post office box number, and ZIP Code) of the HPIs, if any, employed to conduct inspections and, if applicable, the name of the HIO with which the HPIs are affiliated.
- The name and address (including street address or post office box number, and ZIP Code) of each show judge.
- A copy of each class or sale sheet containing the names of horses, the names and addresses (including street address or post office box number, and ZIP Code) of horse owners, the exhibitor number and class number, or sale number assigned to each horse, the show class or sale lot number, and the name and address (including street address or post office box number, and ZIP Code) of the person paying the entry fee and entering the horse in a horse show, horse exhibition, or horse sale or auction.
- A copy of the official horse show, exhibition, sale, or auction program, if any such program has been prepared.
- The name and identification of each horse as required in proposed § 11.10(a)(5), as well as the name and address (including street address or post office box number, and ZIP Code) of the owner, the trainer, the custodian, and the location (including street address and ZIP Code) of the home barn or other facility where the horse is stabled.

We would include in proposed § 11.11(a)(2) the requirement from current § 11.22(b), which requires that management designate a person to maintain the required records.

In proposed § 11.11(a)(3), we would include the requirement from current § 11.22(c) that management furnish to any APHIS representative, upon request, the name and address (including street address or post office box number, and ZIP Code) of the person designated by the sponsoring organization or manager to maintain the records required throughout proposed § 11.11. We would add the requirement that management provide the information requested within 30 days of the request.

We would include provisions for the inspection of records in current § 11.23 in proposed § 11.11(b) and remove § 11.23 from the regulations. Under these provisions, the management of any horse show, exhibition, sale, or auction must permit any APHIS representative, upon request, to examine and make copies of records pertaining to any horse, either required in any part of the regulations or otherwise maintained, during ordinary business hours or other times as may be mutually agreed upon. A room, table, or other facilities necessary for proper examination and copying of such records would need to be made available to the APHIS representative.

We also propose to move provisions for reporting in current § 11.24 to proposed § 11.11(c) and remove § 11.24 from the regulations. We would add that the reports required in proposed § 11.11 may be submitted by mail, fax, or electronic means such as email and note that we prefer that reports be submitted via electronic means.

In proposed § 11.11(c)(1), we would include from current § 11.24(a) the requirement that following the conclusion of any horse show, exhibition, sale, or auction featuring Tennessee Walking Horses, Racking Horses, or related breeds, the management of such show, exhibition, sale or auction would have to submit to the Administrator the information required by proposed § 11.11(a)(1) for each horse disqualified from being shown, exhibited, sold or auctioned, and the reasons for such action. However, instead of requiring that this information be submitted to the Administrator within 5 days, we would allow it to be submitted within 30 days following the conclusion of the show or other event. This change gives management more time to compile the necessary information. If no horses are disqualified, the management would still have to submit a report stating this fact.

Similarly, in proposed § 11.11(c)(2), we would include from § 11.24(b) the requirement that following the conclusion of any horse show, exhibition, or sale or auction that does *not* include Tennessee Walking Horses, Racking Horses, or related breeds, the management would have to inform the Administrator of any case where a horse was disqualified by management or its representatives from being shown, exhibited, sold or auctioned because it was found to be sore. We would allow that this information be submitted within 30 days following the conclusion of the show or other event.

Inspection Procedures for Horse Protection Inspectors

Horse inspection procedures are currently located throughout several sections of the regulations. We propose to add a new § 11.12 in which inspection procedures would be consolidated and amended to reflect proposed changes in other sections, as explained below.

Current § 11.20(b)(2) contains requirements for inspectors. We would remove this section and include a requirement in proposed § 11.12(a)(1) that the HPI physically inspect all Tennessee Walking Horses, Racking Horses, and related breeds for which soring is a concern that are:

- Entered for sale or auction;
- Entered in any animated gait class (whether under saddle, horse to cart, or otherwise), regardless of breed;
- Entered for exhibition before they are admitted to be shown, exhibited, sold, or auctioned, except as provided in proposed § 11.12(a)(2);
- Tied first in their class or event, and any other Tennessee Walking Horse, Racking Horse, or other breed in a class or event at any horse show or exhibition that, in the view of the HPI, raises a concern about soring. Such an inspection would be for the purpose of determining whether any such horses are in compliance with the Act or regulations. The inspection would be conducted in accordance with the inspection procedures provided for in proposed § 11.12.

In proposed § 11.12(a)(2), adapted in part from current § 11.20(b)(2), we would require that when a horse is presented for inspection, its custodian must present the HPI with a record or entry card that includes the horse's required identifying information. The HPI would be required to observe horses in the designated warm-up area and during actual performances whenever possible and to inspect any horse in the barn area and show grounds as he or she deems necessary to determine whether the custodian of any such horse shown, exhibited, sold, or auctioned is in compliance with the Act and regulations.

Current § 11.20(b)(3) states that an inspector must immediately report, to the management of any horse show, exhibition, sale, or auction, any horse which, in his opinion, is sore or otherwise in alleged violation of the Act or regulations. Paragraph (b)(3) further states that such report must be made, whenever possible, before the show class or exhibition involving the horse has begun or before the horse is offered for sale or auction.

We would include this reporting requirement in proposed § 11.12(a)(4) without the words "whenever possible," to eliminate the possibility of sored horses competing or being sold before a report is made.

In proposed § 11.12(a)(5), we would include the requirement that horses prohibited from entering the show arena, whether by a judge, steward, or custodian of the horse, be taken directly to the inspection area for follow-up inspection by a HPI. Horses that suffer serious illness or injury while performing, and determined by an authorized HPI or APHIS representative to require immediate veterinary treatment, would not be required to return to the inspection area.

In proposed § 11.12(b), we would include procedures that must be followed by HPIs while conducting inspections. The intent of these procedures is to help ensure that a HPI can conduct an inspection of the horse to determine whether the custodian of the horse is in compliance with the Act or regulations.

Paragraph (b)(1) of proposed § 11.12 would require that a HPI ensure that all tack except for a halter and lead rope is removed from the horse during inspection.

Paragraph (b)(2) of proposed § 11.12 would require that during the preshow inspection, the HPI direct the custodian of the horse to lead, walk, and turn the horse in a figure-eight to allow the HPI to determine whether the horse exhibits a gait deficiency. A figure-eight pattern ensures that the HPI gets an impression of the horse adequate to determine whether the horse moves in a free and easy manner.

We would include specific requirements in proposed § 11.12(b)(3), taken in part from current § 11.21(a)(3), for proper manipulation of the hoof and limb of a horse during inspection. The digital palpation conducted throughout this process would require pressure against the hoof and limb sufficient to blanch, or whiten, the thumb of the inspecting HPI. The HPI would have to palpate the front limbs of the horse from knee to hoof, with particular emphasis on the fetlocks and pasterns. The HPI would also have to inspect the posterior surface of the pastern by picking up the hoof and examining the posterior (flexor) surface. In addition, the HPI would need to digitally palpate the pocket (sulcus), including the bulbs of the heel, and continue the palpation to the medial and lateral surfaces of the pastern. During palpation of the hoof and limb, the HPI is required to watch for responses to pain in the horse such as sudden movements. While continuing to hold the pastern, the HPI would have to extend the hoof and limb of the horse to inspect the front (extensor) surfaces, including the coronary band.

The HPI may also inspect the rear limbs of all horses inspected after showing, and before showing or on the show grounds whenever he or she considers it necessary. The HPI would be required to inspect the rear limbs of all horses exhibiting lesions or unusual movement of the rear limbs. While carrying out the procedures set forth in paragraph (b)(3) of proposed § 11.12, the HPI would also have to inspect the horse to determine whether it complies with the scar rule in § 11.3.

As part of the inspection, the HPI may also use an x-ray machine or other technologies to detect evidence of soring consistent with violations of the Act or regulations. Such soring practices can include intentional manipulation of a horse's hooves or feet in such a way that can reasonably be expected to cause physical pain or distress, inflammation, or lameness when the animal is walking, trotting, or otherwise moving.

We would require in paragraph (b)(4) of proposed § 11.12, adapted in part from current § 11.21(a)(3), that a HPI observe and inspect all horses for compliance with the provisions set forth in proposed § 11.2, "Prohibited Actions, Practices, Devices, and Substances."

In proposed § 11.12(b)(5), adapted from current § 11.21(a)(4), we would require that the HPI instruct the custodian of the horse to control it for inspection by holding the lead rope approximately 18 inches from the halter. The HPI will not inspect a horse if it is presented in a manner that might cause the horse not to react to a HPI's inspection, or if whips, cigarette smoke, or other actions or paraphernalia are used to distract a horse during inspection.[18] Horses that are not presented in a manner to allow their proper inspection, as well as unruly or fractious horses, would be prohibited from showing. The HPI would have to report all such incidents to show management and APHIS.

Paragraph (c) of proposed § 11.12, adapted in part from paragraph (b) of current § 11.21, would include inspection logistics for HPIs.

Paragraph (c)(1) of proposed § 11.12 would require that in shows with more than 150 horses entered, an authorized HPI may inspect horses 3 classes ahead of the time such horses are to be shown but only if another authorized HPI can provide continuous and uninterrupted supervision of the designated warm-up area for the inspected horses. This is intended to reduce crowding in the designated warm-up area and to lessen the risk that inspected horses could be tampered with while waiting to be shown. In shows with 150 horses or fewer entered, one HPI may inspect horses 2 classes ahead of the time the inspected horses are to be shown but only if another authorized HPI can provide continuous and uninterrupted supervision of the designated warm-up area for the inspected horses.

Paragraph (c)(2) of proposed § 11.12 would require that inspected horses be held in a designated area that is under observation by an authorized HPI or an APHIS representative. Horses would not be permitted to leave the designated area before showing. Only the horse, the custodian, the trainer, the HPI(s), and APHIS representatives would be allowed in the designated area. As noted in proposed § 11.9(b)(3)(i), official guests of show management, such as elected officials, legislators, and technical advisers would be allowed access to the designated inspection and warm-up areas for limited periods of time at the discretion of show management and only with the concurrence of authorized HPIs or APHIS representatives.

We would include in proposed § 11.12(d) requirements for additional inspection procedures that have been adapted from current § 11.21(d). We would allow the HPI to carry out additional inspection procedures on a horse as he or she deems necessary to determine whether the custodian of the horse is in compliance with the Act and regulations. The HPI would be permitted to remove and inspect plastic, cotton, or any materials wrapped around the limbs of any horse at a horse show, exhibition, sale, or auction to determine whether any prohibited foreign substances are present. The HPI may also require that horseshoes be removed by a farrier provided by management as part of the inspection. Finally, the HPI would be authorized to use hooftesters on all horses.

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[18] See footnote 10.

Transportation of Horses

We would move the prohibitions and requirements in current § 11.40 concerning persons involved in transporting certain horses to proposed § 11.13 and remove § 11.40. Under the regulations, each person who ships, transports, or otherwise moves, or delivers or receives for movement, any horse with reason to believe such horse may be shown, exhibited, sold or auctioned at any horse show, exhibition, or sale or auction, would be required to allow inspection of such horse at any such show, exhibition, sale, or auction to determine compliance with the Act and regulations. Such a person would also be required to furnish to any APHIS representatives upon request the following information: Name and address (including street address or post office box number, and ZIP Code) of the horse owner and of the shipper, if different from the owner or trainer; name and address of the horse trainer; name and address of the carrier transporting the horse and the driver of the means of conveyance used; the origin and date of the shipment; and the destination of the shipment. We would also require the transporter to provide APHIS with the name and address (including street address or post office box number, and ZIP Code) of the horse's farrier.

Alternatives Considered

Consistent with Executive Orders 12866 and 13563, which emphasize determining the least costly regulatory option, and with the President's January 12, 2011, Memorandum on Small Businesses and Job Creation, APHIS has considered several alternatives to this proposed action. For the reasons discussed below, we believe the changes proposed in this document represented the best alternative option that would satisfactorily accomplish the stated objectives and minimize impacts on small entities. However, we welcome comments from the public on these and other alternative options. Specifically, we would seek feedback on the viability of alternative approaches that would continue to rely on the horse industry organization concept, and what the governance of such an organization should be like. Additionally, we would request comments on how any proposed alternative would minimize the conflicts of interest issues raised by the 2010 Office of the Inspector General report into the horse protection program, especially as compared to the changes proposed in this document.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides an initial regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The prohibition of pads and action devices does not impose costs on shows or the shows' participants. However, of these proposed amendments to the horse protection regulations, only the amendments requiring a farrier to be present for all shows, exhibitions, sales, and auctions and a minimum of 2 HPIs for shows with 150 or fewer horses and more than 2 HPIs for shows with more than 150 horses may result in additional costs for the shows or their participants. Based on the estimates of an expert elicitation commissioned by APHIS, the cost of services provided by veterinarians, farriers, and HPIs ranges from a few hundred to several thousand dollars. However, by prohibiting pads and action devices, inspections may be slightly more efficient and less time-consuming. Any additional cost burden to a show would depend on the show's ability to pass these costs along to attendants or other entities involved with the shows. Many if not most of the entities that may be affected by this proposed rule are small.

While the proposed rule would result in better oversight of the HPIs and enforcement of the HPA, implementation of the proposed changes would result in additional administrative and computer-related costs associated with training, licensing, and certifying HPIs. Consequently, APHIS would need to allocate resources to design, coordinate, and deliver computer-based training of HPIs, and provide program guidance and oversight. In FY 2015, the USDA's Horse Protection Program received $697,000 in appropriated funding. APHIS would be able to implement the proposed Horse Protection Program revisions and maintain this same level of funding through a reallocation among Program activities of approximately $300,000. For example, APHIS expects there to be a large reduction in Program travel expenditures because, with the HPIs trained and licensed by APHIS, they will require less direct Agency oversight. USDA personnel would continue to attend a percentage of horse events, to ensure consistency among inspectors, address performance concerns, and assist in meeting the program's goals.

The benefits of the proposed rule are expected to justify the costs. The proposed changes to the horse protection regulations would promote the humane treatment of walking and racking horses by more effectively ensuring that those horses that participate in exhibitions, sales, shows, or auctions are not sored. This benefit is an unquantifiable animal welfare enhancement.

The proposed rule is not expected to adversely impact communities in which shows are held since walking and racking horse shows are expected to continue. Therefore, owners will still be able to participate in shows if they choose to participate. Better enforcement of the HPA is expected to also benefit participating HIOs and HIO-affiliated shows by improving the reputation of the walking and racking horse industry. Participation in HIO-affiliated events may increase if the proposed rule were to result in increased confidence by owners that individuals who intentionally sore horses to gain a competitive advantage are likely to be prevented from participating. The affected HIOs would also benefit from no longer having to bear the costs of training and licensing the HPIs.

If promulgated, this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Animal and Plant Health Inspection Service has assessed the impact of this proposed rule on Indian tribes and determined that this proposed rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, the Animal and Plant Health Inspection Service will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), some of the information collection and recordkeeping requirements included in this proposed rule have been approved under 0579–0056. The new reporting and recordkeeping requirements proposed by this rule have been submitted as a new information collection package for approval to the Office of Management and Budget (OMB). Upon approval of this new information collection, it will be merged into the existing 0579–0056. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2011–0009. Please send a copy of your comments to: (1) APHIS, using one of the methods described under **ADDRESSES** at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

The regulations in 9 CFR part 11 authorized by the HPA require actions including, but not limited to, ensuring that inspectors are trained and licensed; requiring the management of horse shows, auctions, sales, and/or exhibitions to notify APHIS in advance that events are going to occur and to provide for the inspection of horses for soring; requiring inspectors to notify the custodian if a horse is detained for inspection, testing, or taking of evidence with respect to soring; and providing a waiver process to waive certain classes of horses from being inspected for soring.

We are soliciting comments from the public and others concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 7 minutes per response.

Respondents: Management of horse shows, events, auctions, sales, and exhibitions; individuals seeking inspector certification; and certified inspectors.

Estimated annual number of respondents: 50.

Estimated annual number of responses per respondent: 8.72.

Estimated annual number of responses: 436.

Estimated total annual burden on respondents: 51 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this new information collection are located at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0009* and can be obtained from Kimberly Hardy, APHIS' Information Collection Coordinator, at 301–851–2727.

USDA will respond to any information collection request-related comments in the final rule. All comments will also become a matter of public record.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Reporting and recordkeeping requirements.

Accordingly, we propose to revise 9 CFR part 11 to read as follows:

PART 11—HORSE PROTECTION REGULATIONS

Sec.
11.1 Definitions.
11.2 Prohibited actions, practices, devices, and substances.
11.3 Scar rule.
11.4 Providing required information.
11.5 Inspection and detention of horses; responsible parties.
11.6 Training and licensing of Horse Protection Inspectors (HPIs).
11.7–11.8 [Reserved]
11.9 Management responsibilities; access, space, and facilities.
11.10 Management responsibilities; operation of horse shows, horse exhibitions, and horse sales and auctions.
11.11 Management responsibilities; records and reporting.
11.12 Inspection procedures for HPIs.
11.13 Requirements concerning persons involved in transportation of certain horses.

Authority: 15 U.S.C. 1823–1825 and 1828; 7 CFR 2.22, 2.80, and 371.7.

§ 11.1 Definitions.

For the purpose of this part, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also impart the plural and the masculine form shall also impart the feminine. Words of art undefined in the following paragraphs shall have the meaning attributed to them by trade usage or general usage as reflected by definition in a standard dictionary, such as "Webster's."

Act means the Horse Protection Act, as amended (Pub. L. 94–360), 15 U.S.C. 1821 *et seq.*

Action device means any boot, collar, chain, beads, bangles, roller, or other device which encircles or is placed upon the lower extremity of the leg of a horse in such a manner that it can either rotate around the leg, or slide up and down the leg so as to cause friction, or which can strike the hoof, coronet band, or fetlock joint.

Administrator means the Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator. Mail for the Administrator should be sent to the Animal and Plant Inspection Service, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737–1234.

Animal and Plant Health Inspection Service (APHIS) means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative means any employee or official of APHIS.

Custodian means any person who is responsible for directing, controlling, and supervising the horse during the inspection at any horse show, exhibition, sale, or auction; or any person who shows or exhibits, or enters for the purpose of showing or exhibiting, in any horse show or horse exhibition, any horse; or any person who sells, auctions, or offers for sale, in any horse sale or auction, any horse. The term also means any person who owns a horse and allows the horse to be shown, exhibited, or entered in a show or exhibition, sold or auctioned, or entered in a sale or auction, or transported for any of these purposes, or any person who transports a horse for showing, exhibition, sale, or auction. The custodian must also be able to provide required information about the horse.

Department means the United States Department of Agriculture.

Exhibitor means:

(1) Any custodian who directs or allows any horse under his direction, control, or supervision to be entered in any horse show or horse exhibition;

(2) Any custodian who shows or exhibits any horse, any custodian who allows his horse to be shown or exhibited, or any custodian who directs or allows any horse under his direction, control, or supervision to be shown or exhibited in any horse show or horse exhibition;

(3) Any custodian who enters or presents any horse for sale or auction, any custodian who allows his horse to be entered or presented for sale or auction, or any custodian who allows any horse under his direction, control, or supervision to be entered or presented for sale or auction in any horse sale or horse auction; or

(4) Any custodian who sells or auctions any horse, any custodian who allows his horse to be sold or auctioned, or any custodian who allows any horse under his direction, control, or supervision to be sold or auctioned.

Horse means any member of the species *Equus caballus.*

Horse exhibition means a public display of any horses, singly or in groups, but not in competition. The term does not include events where speed is the prime factor, rodeo events, parades, or trail rides.

Horse Protection Inspector (HPI) means a person meeting the requirements specified in § 11.6 whom the Administrator has licensed as a HPI (formerly termed a Designated Qualified Person, or DQP). A HPI may be appointed and delegated authority by the management of any horse show, horse exhibition, horse sale, or horse auction under section 4 of the Act to detect or diagnose horses which are sore or to otherwise inspect horses and any records pertaining to such horses for the purposes of enforcing the Act.

Horse sale or horse auction means any event, public or private, at which horses are sold or auctioned, regardless of whether or not the horses are exhibited prior to or during the sale or auction.

Horse show means a public display of any horses, in competition. The term does not include events where speed is the prime factor, rodeo events, parades, or trail rides.

Inspection means any visual, physical, and diagnostic means approved by APHIS to determine compliance with the Act and regulations. Such inspection may include, but is not limited to, visual inspection of a horse and records, physical inspection of a horse, including touching, rubbing, palpating, and observation of vital signs, and the use of any diagnostic device or instrument, and may require the removal of any shoe or any other equipment, substance, or paraphernalia from the horse when deemed necessary by the person conducting such inspection.

Management means any person who organizes, exercises control over, or administers or is responsible for organizing, directing, or administering any horse show, horse exhibition, horse sale or horse auction and specifically includes, but is not limited to, the sponsoring organization and show manager.

Person means any individual, corporation, company, association, firm, partnership, society, organization, joint stock company, State or local government agency, or other legal entity.

Secretary means the Secretary of Agriculture or anyone who has heretofore or may hereafter be delegated authority to act in his stead.

Show manager means the person who has been delegated primary authority by a sponsoring organization for managing a horse show, horse exhibition, horse sale, or horse auction.

Sore when used to describe a horse means:

(1) An irritating or blistering agent has been applied, internally or externally, to any limb of a horse;

(2) Any burn, cut, or laceration has been inflicted on any limb of a horse;

(3) Any tack, nail, screw, or chemical agent has been injected into or used on any limb of a horse; or

(4) Any other substance or device has been used on any limb of a horse, and as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was given.

Sponsoring organization means any person or entity under whose responsibility a horse show, horse exhibition, horse sale, or horse auction is conducted.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

Substance means any agent applied to a horse's limbs while a horse is shown, exhibited, or offered for sale, or otherwise present on the grounds at any horse show, horse exhibition, or horse sale or auction. This definition also includes any agent applied to a horse's limbs before or after a horse is shown, exhibited, or offered for sale, or otherwise present on the grounds at any horse show, horse exhibition, or horse sale or auction.

§ 11.2 Prohibited actions, practices, devices, and substances.

(a) *Specific prohibitions.* No device, method, practice, or substance shall be used with respect to any horse at any horse show, horse exhibition, or horse sale or auction if such use causes or can reasonably be expected to cause such horse to be sore. The use of the following devices, equipment, or practices is specifically prohibited with respect to any Tennessee Walking Horse, Racking Horse, or related breed that performs with an accentuated gait that raises concerns about soring at any horse show, horse exhibition, horse sale, or horse auction:

(1) Any action device as defined in § 11.1 is prohibited.

(2) Any pad, wedge, or hoof band is prohibited.

(3) The use of any weight on horses up to 2 years old, except a keg or similar conventional horseshoe is prohibited, as is the use of a horseshoe on horses up to 2 years old that weighs more than 16 ounces.

(4) Artificial extension of the toe length is prohibited.

(5) Any object or material inserted into the hoof other than acceptable hoof packing, which includes pine tar, oakum, live rubber, sponge rubber, silicone, commercial hoof packing or other substances used to maintain adequate frog pressure or sole consistency, is prohibited. Acrylic and other hardening substances are prohibited as hoof packing.

(6) Single or double rocker-bars on the bottom surface of horseshoes which extend more than 1 1/2 inches back from the point of the toe, or any device which would cause, or could reasonably be expected to cause, an unsteadiness of stance in the horse with resulting muscle and tendon strain due to the horse's weight and balance being focused upon a small fulcrum point, are prohibited.[1]

(7) Shoeing a horse, or trimming a horse's hoof in a manner that will cause such horse to suffer, or can reasonably be expected to cause such horse to suffer pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving is prohibited, as is paring out of the frog. Bruising of the hoof or any other method of pressure shoeing is prohibited.

(8) Lead or other weights attached to the outside of the hoof wall or the outside surface of the horseshoe are prohibited. Hollow shoes or artificial extensions filled with mercury or similar substances are prohibited.

(b) *Substances.* Any substances are prohibited on the limbs of any Tennessee Walking Horse, Racking Horse, or related breed horse that performs with an accentuated gait while being shown, exhibited, or offered for sale, or otherwise present on the grounds at, any horse show, horse exhibition, or horse sale or auction.

(c) *Restrictions on 2-year-old horses.* With regard to 2-year-old Tennessee Walking Horses, Racking Horses, and related horse breeds that perform with an accentuated gait that raises concerns about soring (horses eligible to be shown or exhibited in 2-year-old classes), any performances, classes, workouts, or working exhibitions at horse shows, exhibitions, sales or auctions must not exceed a total of 10 minutes continuous workout or performance without a minimum 5-minute rest period between the first such 10-minute period and the second such 10-minute period. More than two such 10-minute periods per performance, class, or workout are prohibited.

§ 11.3 Scar rule.

The scar rule applies to all horses born on or after October 1, 1975. Horses subject to this rule that do not meet the following scar rule criteria shall be considered to be "sore" and are subject to all prohibitions of section 5 of the Act. The scar rule criteria are as follows:

(a) The anterior and anterior-lateral surfaces of the fore pasterns (extensor surface) must be free of bilateral granulomas,[2] other bilateral pathological evidence of inflammation, and other bilateral evidence of abuse indicative of soring including, but not limited to, excessive loss of hair.

(b) The posterior surfaces of the pasterns (flexor surface), including the sulcus or "pocket" may show bilateral areas of uniformly thickened epithelial tissue if such areas are free of proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation.

§ 11.4 Providing required information.

Failing to provide information, or providing any false or misleading information, by any custodian of any horse shown, exhibited, sold, or auctioned or entered for the purpose of being shown, exhibited, sold, or auctioned at any horse show, horse exhibition, or horse sale or auction, is prohibited. Such information shall include, but is not limited to: The name and identification of the horse; the name and address of the horse's training and/or stabling facilities; the name and address of the legal owner, trainer, custodian, or other legal entity bearing responsibility for the horse; the class in which the horse is entered or shown; the exhibitor identification number; and any other information reasonably related to the identification, ownership, control, direction, or supervision of any such horse.

§ 11.5 Inspection and detention of horses; responsible parties.

(a) Each custodian of any horse at any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, admit any APHIS representative or authorized Horse Protection Inspector (HPI) appointed by management to all areas of barns, compounds, horse vans, horse trailers, stables, stalls, paddocks, or other show, exhibition, or sale or auction grounds or related areas at any horse show, horse exhibition, or horse sale or auction, for the purpose of inspecting any such horse at any and all reasonable times. Such inspections may be required of any horse which is stabled, loaded on a trailer, being prepared for show, exhibition, or sale or auction, being exercised or otherwise on the grounds of, or present on the grounds at, any horse show, horse exhibition, or horse sale or auction, whether or not such horse has or has not been shown, exhibited, or sold or auctioned, or has or has not been entered for the purpose of being shown or exhibited or offered for sale or auction at any such horse show, horse exhibition, or horse sale or auction. HPIs and APHIS representatives will not generally or routinely delay or interrupt actual individual classes or performances at horse shows, horse exhibitions, or horse sales or auctions for the purpose of examining horses, but they may do so in extraordinary situations such as, but not limited to, lack of proper facilities for inspection, failure of management to cooperate with inspection efforts, reason to believe that failure to immediately perform inspections may result in the loss, removal, or masking of any evidence of a violation of the Act or the regulations, or a request by management that such inspections be performed by an authorized HPI or APHIS representative.

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[1] This prohibition is not intended to disallow corrective devices, such as Memphis bars which consist of a metal bar(s) crossing from the ground surface of one side of the horseshoe to the ground surface of the other side of the horseshoe, and the purpose of which is to correct a lameness or pathological condition of the hoof: *Provided,* That such metal bar(s) do not act as a single fulcrum point so as to affect the balance of the horse.

[2] Granuloma is defined as any one of a rather large group of fairly distinctive focal lesions that are formed as a result of inflammatory reactions caused by biological, chemical, or physical agents.

(b) Each custodian of any horse at any horse show, horse exhibition, or horse sale or auction shall promptly present his horse for inspection upon notification, orally or in writing, by any APHIS representative or an authorized HPI appointed by management, that the horse has been selected for inspection for the purpose of determining whether such horse is in compliance with the Act and regulations.

(c) No tack other than a halter and lead rope may be on the horse during inspection.

(d) When an authorized HPI or APHIS representative notifies the custodian of a horse at any horse show, horse exhibition, or horse sale or auction that he or she desires to inspect such horse, it shall not be moved from the horse show, horse exhibition, or horse sale or auction until such inspection has been completed and the horse has been released by an authorized HPI or APHIS representative.

(e) For the purpose of inspection, testing, or taking of evidence, authorized HPIs and APHIS representatives may detain for a period not to exceed 24 hours any horse, at any horse show, horse exhibition, or horse sale or auction, which is sore or which an authorized HPI or APHIS representative has probable cause to believe is sore. Such detained horse may be marked for identification and any such identifying markings shall not be removed by any person other than an authorized HPI or APHIS representative.

(f) Detained horses shall be kept under the supervision of an authorized HPI or APHIS representative in a horse stall, horse trailer, or other facility to which access shall be limited. It shall be the policy of APHIS to have at least one authorized HPI or APHIS representative present in the immediate detention area when a horse is being held in detention. A detained horse cannot be moved by any person other than an authorized HPI or an APHIS representative, unless:

(1) The life or well-being of the detained horse is immediately endangered by fire, flood, windstorm, or other dire circumstances that are beyond human control.

(2) The detained horse is in need of such immediate veterinary attention that its life may be in peril before an authorized HPI or APHIS representative can be located.

(3) The horse has been detained for a maximum 24-hour detention period, and an authorized HPI or APHIS representative is not available to release the horse.

(g) The custodian of any horse detained by an authorized HPI or APHIS for further examination, testing, or the taking of evidence shall be allowed to feed, water, and provide other normal custodial and maintenance care, such as walking, grooming, etc., for such detained horse:

Provided, That:

(1) Such feeding, watering, and other normal custodial and maintenance care of the detained horse is rendered under the direct supervision of an authorized HPI or APHIS representative.

(2) Any non-emergency veterinary care of the detained horse requiring the use, application, or injection of any drugs or other medication for therapeutic or other purposes is rendered by a Doctor of Veterinary Medicine in the presence of an authorized HPI or APHIS representative and, the identity and dosage of the drug or other medication used, applied, or injected and its purpose is furnished in writing to the authorized HPI or APHIS representative prior to such use, application, or injection by the Doctor of Veterinary Medicine attending the horse. The use, application, or injection of such drug or other medication must be certified by an authorized HPI or APHIS representative.

(h) When possible, APHIS will inform the custodian of any horse allegedly found to be in violation of the Act or the regulations of such alleged violation or violations before the horse is released by an authorized HPI or APHIS representative.

(i) The custodian of any horse or horses that an authorized HPI or APHIS representative determines shall be detained for inspection, testing, or taking of evidence pursuant to paragraph (e) of this section shall be informed after such determination is made and shall allow the horse to be immediately put under the supervisory custody of APHIS as provided in paragraph (f) of this section until the completion of such inspection, testing, or gathering of evidence, or until the 24-hour detention period expires.

(j) The custodian of any horse allegedly found to be in violation of the Act or regulations, and who has been notified of such alleged violation by an authorized HPI or APHIS representative as stated in paragraph (h) of this section, may request reinspection and testing of the horse within a 24-hour period if:

(1) Such request is made to the APHIS representative immediately after the horse has been inspected by an authorized HPI or APHIS representative and before such horse has been removed from the inspection facilities; and

(2) An authorized HPI or APHIS representative determines that sufficient cause for reinspection and testing exists; and

(3) The horse is maintained under HPI or APHIS supervisory custody as prescribed in paragraph (f) of this section until such reinspection and testing has been completed.

(k) The custodian of any horse being inspected shall render such assistance as an authorized HPI or APHIS representative may request for purposes of such inspection.

§ 11.6 Training and licensing of Horse Protection Inspectors (HPIs).

APHIS will train and license HPIs. The management of any horse show, horse exhibition, horse sale, or horse auction may engage HPIs holding a valid, current license under section 4 of the Act and appoint and delegate authority to HPIs to detect or diagnose horses that are sore or to otherwise inspect horses and any records pertaining to such horses for the purposes of enforcing the Act. A current list of licensed HPIs is available on the APHIS Horse Protection Program Web site.

(a) *Basic qualifications of HPI applicants.* Persons licensed as HPIs under this part shall be veterinarians or veterinary technicians. The required qualifications of each are as follows. (1) Veterinarians must have extensive knowledge and experience of equine husbandry and science defined as understanding the anatomy, selection, breeding, care, and maintenance of horses, and applicable principles of equine science, welfare, care, and veterinary health, and be eligible to be licensed as HPIs under paragraph (b) of this section. Veterinarians must also be accredited in any State by the United States Department of Agriculture under part 161 of this chapter and be:

(i) Members of the American Association of Equine Practitioners; or

(ii) Large animal practitioners with substantial equine experience; or

(iii) Knowledgeable in the area of equine soring and soring practices (such as Doctors of Veterinary Medicine with a small animal practice with sufficient knowledge of horses, or Doctors of Veterinary Medicine who teach equine-related subjects in an accredited college or school of veterinary medicine).

(2) Veterinary technicians who wish to be licensed as HPIs under this part must have a degree awarded by an educational program accredited by the American Veterinary Medical Association Committee on Veterinary Technician Education and Activities, possess adequate knowledge and

experience of equine husbandry and science, and be eligible to be licensed as HPIs under paragraph (b) of this section.

(b) *Additional restrictions on HPI licensing.* (1) APHIS will not license any person as a HPI if that person has been convicted or found to have violated any provision of the Act or the regulations in this part occurring after July 13, 1976, or has been assessed any fine or civil penalty, or has been the subject of a disqualification order in any proceeding involving an alleged violation of the Act or regulations occurring after July 13, 1976.

(2) APHIS will not license any person as a HPI if that person, any member of that person's immediate family, or that person's employer participates in the showing of horses or acts as a judge or farrier, or is an agent of show management involving any Tennessee Walking Horses, Racking Horses, or related breeds.

(3) APHIS will not license any person as a HPI if that person has been disqualified by the Secretary of Agriculture from making detection, diagnosis, or inspection for the purpose of enforcing the Act.

(4) APHIS will not license any person as a HPI if the honesty, professional integrity, reputation, practices, and reliability of the person do not support a conclusion that the applicant is fit to carry out the duties of a HPI. In making this conclusion, the Administrator shall review all available information about the applicant and shall consider:

(i) Criminal conviction records, if any, indicating that the person may lack the honesty, integrity, and reliability to appropriately and effectively perform HPI duties;

(ii) Official records of the person's actions while participating in Federal, State, or local veterinary programs when those actions reflect on the honesty, reputation, integrity, and reliability of the person;

(iii) Judicial determinations in any type of litigation adversely reflecting on the honesty, reputation, integrity, and reliability of the person; and

(iv) Any other evidence reflecting on the honesty, reputation, professional integrity, reputation, practices, and reliability of the person.

(c) *Licensing of HPIs.* (1) All persons wishing to become HPIs must submit an application to the Administrator. Applicants will be required to show that they satisfy the requirements in paragraphs (a) and (b) of this section. HPI applicants selected as candidates will complete a formal training program administered by APHIS. This training program will include instruction on:

(i) The anatomy and physiology of the limbs of a horse;

(ii) The Act and the regulations in this part;

(iii) The history of soring, the physical inspection procedures necessary to detect soring, the detection and diagnosis of soring, and related subjects;

(iv) Practical instruction using live horses;

(v) HPI standards of conduct; and

(vi) Recordkeeping requirements and procedures.

(2) After a HPI candidate successfully completes the formal training program in paragraph (c)(1) of this section and passes a written examination, a license will be granted to that candidate for 1 year. Licenses terminate after 1 year and all HPIs must submit a new application each year if they wish to be considered for licensing for another year.

(d) *Requirements to be met by HPIs.* (1) Any licensed HPI appointed by the management of any horse show, horse exhibition, horse sale or auction to inspect horses for the purpose of detecting and determining or diagnosing horses which are sore and to otherwise inspect horses for the purpose of determining compliance with the Act and regulations shall collect and maintain the following information and records concerning any horse which he or she recommends be disqualified or prohibited for any reason from being shown, exhibited, sold or auctioned:

(i) The name and address, including street address or post office box number, and ZIP Code, of the show and the show manager;

(ii) The name and address, including street address or post office box number, and ZIP Code, of the horse owner;

(iii) The name and address, including street address or post office box number, and ZIP Code, of the horse trainer;

(iv) The name and address, including street address or post office box number, and ZIP Code, of the farrier;

(v) The name and address, including street address or post office box number, and ZIP Code, of the horse exhibitor;

(vi) The exhibitor's number and class number, or the sale or auction tag number of the horse;

(vii) The date and time of the inspection;

(viii) A detailed description of all of the HPI's findings and the nature of the alleged violation, or other reason for prohibiting the horse, including the HPI's statement regarding the evidence or facts upon which show management disqualified the horse from a show, exhibition, sale or auction;

(ix) The name, registration number (if the horse is registered), age, sex, color, and markings of the horse; and

(x) The name or names of the show manager or other management representative notified by the HPI that such horse should be disqualified and whether or not such manager or management representative disqualified such horse.

(2) Copies of the records required by paragraph (d)(1) of this section shall be submitted by the HPI to APHIS and show management within 72 hours after the horse show, exhibition, sale, or auction is over.

(3) After completing inspection, the HPI shall inform the custodian of each horse that is noncompliant with the Act or regulations, notify the custodian, on behalf of show management, that the horse is disqualified from participating in any show, exhibition, sale or auction, or involved with any other action under the Act or its regulations along with the reasons for such action. The HPI shall collect the information relating to the alleged violation from the custodian.

(4) The HPI shall immediately inform management of each case regarding the custodian of any horse which, in his opinion, is found to be in noncompliance with the Act or regulations.

(e) *Denial and revocation of HPI license.* APHIS will deny or revoke a license for any of the reasons outlined in paragraph (b) of this section, and will revoke the license of any HPI who fails to follow the inspection procedures set forth in § 11.12, or who otherwise carries out his or her duties and responsibilities in a less than satisfactory manner. Upon denial or revocation of a license, the applicant or HPI may appeal the revocation to the Administrator within 30 days from the date of such decision, and the Administrator shall make a final determination in the matter. If the Administrator upholds the denial or revocation of the license, the applicant or HPI shall be given notice and opportunity for a hearing. Hearings will be in accordance with the Uniform Rules of Practice for the Department of Agriculture in 7 CFR 1.130 through 1.151. The license denial shall remain in effect until the final legal decision has been rendered.

(f) *Inspectors licensed prior to [effective date of final rule].* Inspectors licensed as Designated Qualified Persons (DQPs) prior to [effective date of final rule] may not perform inspection duties under that license after the effective date. DQPs seeking to become inspectors after [effective date of final rule] must apply for a license and fulfill all HPI eligibility requirements included in this section.

§ 11.7–11.8 [Reserved]

§ 11.9 Management responsibilities; access, space, and facilities.

(a) *Access to premises and records.* Requirements regarding access to premises for inspection of horses and records are as follows:

(1) The management of any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, provide authorized HPIs and APHIS representatives with unlimited access to the grandstands, sale ring, barns, stables, grounds, offices, and all other areas of any horse show, horse exhibition, or horse sale or auction, including any adjacent areas under their direction, control, or supervision for the purpose of inspecting any horses, or any records required to be kept by regulation or otherwise maintained.

(2) The management of any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, provide authorized HPIs and APHIS representatives with an adequate, safe, sufficient, and accessible area for the visual inspection and observation of horses while such horses are competitively or otherwise performing at any horse show or horse exhibition, or while such horses are being sold or auctioned or offered for sale or auction at any horse sale or horse auction.

(b) *Inspection space and facility requirements.* The management of every horse show, horse exhibition, horse sale or auction, including horse shows, horse exhibitions, horse sales or auctions which do not include Tennessee Walking Horses, Racking Horses, or related breeds of horses that perform with an accentuated gait that raises concerns about soring, shall provide, without fee, charge, assessment, or other compensation, sufficient space and facilities for authorized HPIs and APHIS representatives to carry out their duties under the Act and regulations when requested to do so by authorized HPIs or APHIS representatives, whether or not management has received prior notification or otherwise knows that such show may be inspected by APHIS. With respect to such space and facilities, it shall be the responsibility of management to provide at least the following:

(1) Sufficient space in a convenient location to the horse show, horse exhibition, or horse sale or auction arena, acceptable to authorized HPIs and APHIS representatives, in which horses may be physically, thermographically, or otherwise inspected.

(2) Protection from the elements of nature, such as rain, snow, sleet, hail, wind, etc.

(3) Control of crowds or onlookers in order that authorized HPIs and APHIS representatives may carry out their duties safely and without interference.

(i) Each horse in the designated inspection and warm-up areas may be accompanied by no more than three individuals, including the trainer, custodian, and rider. Official guests of show management, such as elected officials, legislators, and technical advisers may be allowed access to the designated inspection and warm-up areas for limited periods of time at the discretion of show management and only with the concurrence of an authorized HPI or APHIS representative.

(ii) Management must not in any way influence show attendees to assault, resist, oppose, impede, intimidate, or interfere with authorized HPIs or APHIS representatives. If management influences attendees in such a manner, inspections will not be provided and the management will be liable for any violations of the Act or the regulations in this part.

(4) An accessible, reliable, and convenient 110-volt electrical power source, if electrical service is requested by an APHIS representative or an authorized HPI to conduct inspections.

(5) Appropriate areas adjacent to the inspection area for designated horses to wait before and after inspection, and an area to be used for detention of horses.

§ 11.10 Management responsibilities; operation of horse shows, horse exhibitions, and horse sales and auctions.

(a) At horse shows, horse exhibitions, or horse sales or auctions involving Tennessee Walking Horses, Racking Horses, and related breeds that perform with an accentuated gait that raises concerns about soring, the management of any such horse show, exhibition, sale, or auction must:

(1) Notify the Administrator of the event at least 30 days before it begins. Notification must be received by that date and may be made by mail, fax, or electronic means such as email.[3] The electronic means is strongly preferred. Notification must include:

(i) The name and location of the horse show, horse exhibition, or horse sale or auction;

(ii) The name, address, phone number (and email address, if available) of the manager;

(iii) The date or dates of the horse show, horse exhibition, or horse sale or auction;

(iv) A copy of the official horse show, exhibition, sale, or auction program, if any such program has been prepared; and

(v) The name or names of the APHIS-licensed HPIs scheduled to perform inspections at the horse show, exhibition, sale, or auction, should show management choose to engage APHIS-licensed HPIs.

(2) Ensure that no devices or substances prohibited under § 11.2 are present in the warm-up area.

(3) Post the list of persons who are subject to a USDA order disqualifying them from participating in horse shows, exhibitions, sales, and auctions in a prominent place;

(4) Check the drivers' licenses or other official photo identification of the people entering horses in the horse show, horse exhibition, or horse sale or auction against the list noted in paragraph (a)(3) of this section, and prevent them from entering their horses if they are on the list; and

(5) Ensure that all horses entered in the horse show, horse exhibition, or horse sale or auction are identified. If any horse entered in the horse show, exhibition, sale, or auction belongs to a registry, the registry number and registry records must be provided to an authorized HPI or APHIS representative, upon request. Horses must also be identified by one of the following methods:

(i) A description sufficient to identify the individual equine, as determined by an authorized HPI or an APHIS representative, including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (*e.g.*, brands, tattoos, cowlicks, or blemishes); or

(ii) Electronic identification that complies with ISO 11784/11785; or

(iii) An equine passport issued by a State government and accepted in the government of the State in which the horse show, horse exhibition, or horse sale or auction will occur; or

(iv) Digital photographs sufficient to identify the individual equine, as determined by an authorized HPI or an APHIS representative.

(b) *Horse shows, horse exhibitions, and horse sales and auctions at which the management does not designate and appoint HPIs.* (1) At horse shows, horse exhibitions, or horse sales or auctions involving Tennessee Walking Horses, Racking Horses, and related breeds that perform with an accentuated gait that raises concerns about soring, management shall be responsible for identifying all horses that are sore or otherwise noncompliant with the Act or the regulations. Management shall prohibit the showing, exhibition, sale, offering for sale, or auction of any horse that is sore. In instances where a horse is found sore during actual participation in the horse show, horse exhibition, horse sale, or horse auction, management shall disqualify the horse prior to the tying of the class, or completion of the show, exhibition, sale, or auction. In each Tennessee Walking Horse, Racking Horse, or related breed class or event at any horse show or exhibition, management shall inspect all horses tied first, second, or third, and any other horses they may select for inspection, to determine if such horses are compliant with the Act or the regulations.

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[3] Email notification may be sent to *hp@aphis.usda.gov*.

(2) Copies of the records required under § 11.6(d)(1) shall be collected and submitted by management to APHIS within 72 hours after the horse show, exhibition, sale, or auction is over.

(3) After completing inspection, management shall notify the custodian of each horse that is noncompliant with the Act or regulations that the horse is disqualified from participating in any show, exhibition, sale or auction, or involved with any other action under the Act or its regulations along with the reasons for such action. Management shall collect the information relating to the alleged violation from the custodian.

(c) *Horse shows, horse exhibitions, and horse sales and auctions at which the management designates and appoints HPIs.* (1) The management of any horse show, horse exhibition, horse sale or auction that designates and appoints APHIS-licensed HPIs to inspect horses must designate and appoint a minimum of 2 HPIs if 150 horses or fewer are entered in the event. If more than 150 horses are entered in the horse show, horse exhibition, or horse sale or auction, the management must appoint more than 2 HPIs. The management must also make a farrier available to assist in inspections at every horse show, horse exhibition, or horse sale and auction.

(2) The management shall accord authorized HPIs access to all records and areas of the grounds of such show, exhibition, sale, or auction and the same right to inspect horses and records as is accorded to any APHIS representative under this section. Further, management shall not take any action which would interfere with or influence the HPIs in carrying out his or her duties.

(3) After an authorized HPI has completed inspection, management must prevent tampering with any part of a horse's limbs or hooves in such a way that could cause a horse to be sore.

(4) If management is dissatisfied with the performance of a particular HPI, including disagreement with the HPI's finding that a horse is sore, management shall not dismiss or otherwise interfere with the HPI during the HPI's appointed tour of duty, which is the duration of the horse show, horse exhibition, or horse sale or auction. However, if management has reason to believe that a horse is sore but it is not determined to be sore by the HPI, management shall override the HPI's decision and disqualify the horse from participating in the event. Management should immediately notify, in writing, the Administrator as to why management believes the performance of the HPI was inadequate or otherwise unsatisfactory. Management that designates and appoints HPIs shall disqualify from showing, exhibition, sale, offering for sale, or auction of any horse identified by the HPI or any horse otherwise known by management to be sore.

(5) If an authorized HPI or APHIS representative finds any horse to be sore or otherwise noncompliant with the Act or regulations at a show, exhibition, sale, or auction, featuring Tennessee Walking Horses, Racking Horses, or related breeds, the management must disqualify the horse from competing, being exhibited, sold, or auctioned in that show, exhibition, sale or auction.

§ 11.11 Management responsibilities; records and reporting.

(a) *Records required and disposition thereof.* (1) The management shall maintain for a period of at least 6 years following the closing date of the show, exhibition, or sale or auction, all pertinent records containing:

(i) The dates and place of the horse show, horse exhibition, horse sale, or horse auction.

(ii) The name and address (including street address or post office box number, and ZIP Code) of the sponsoring organization.

(iii) The name and address of the horse show, exhibition, horse sale, or horse auction management.

(iv) The name and address (including street address or post office box number, and ZIP Code) of the HPIs employed to conduct inspections under § 11.6.

(v) The name and address (including street address or post office box number, and ZIP Code) of each show judge.

(vi) A copy of each class or sale sheet containing the names of horses, the names and addresses (including street address or post office box number, and ZIP Code) of horse owners, the exhibitor number and class number, or sale number assigned to each horse, the show class or sale lot number, and the name and address (including street address or post office box number, and ZIP Code) of the person paying the entry fee and entering the horse in a horse show, horse exhibition, or horse sale or auction.

(vii) A copy of the official horse show, horse exhibition, horse sale, or horse auction program, if any such program has been prepared.

(viii) The name and identification required in § 11.10(a) of each horse, as well as the name and address (including street address or post office box number, and ZIP Code) of the owner, the trainer, the custodian, and the location (including street address and ZIP Code) of the home barn or other facility where the horse is stabled.

(2) The management of any horse show, horse exhibition, or horse sale or auction shall designate a person to maintain the records required in this section.

(3) The management of any horse show, horse exhibition, or horse sale or auction shall furnish to any APHIS representative, upon request, the name and address (including street address or post office box number, and ZIP Code) of the person designated by the sponsoring organization or manager to maintain the records required by this section. Management must provide this information within 30 days of the request.

(b) *Inspection of records.* The management of any horse show, horse exhibition, or horse sale or auction shall permit any authorized HPI or APHIS representative, upon request, to examine and make copies of any and all records pertaining to any horse, either required in any part of the regulations, or otherwise maintained, during ordinary business hours or such other times as may be mutually agreed upon. A room, table, or other facilities necessary for proper examination of such records shall be made available to the APHIS representative or authorized HPI.

(c) *Reporting.* The reports in this paragraph may be submitted by mail, fax, or electronic means such as email.[4] The electronic means is strongly preferred.

(1) Within 30 days following the conclusion of any horse show, horse exhibition, or horse sale or auction containing Tennessee Walking Horses, Racking Horses, or related breeds that perform with an accentuated gait that raises concerns about soring, the management of such show, exhibition, sale or auction shall submit to the Administrator the information required by paragraph (a)(1) of this section for

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[4] See footnote 3.

each horse disqualified by management or its representatives from being shown, exhibited, sold or auctioned, and the reasons for such action. If no horses are disqualified, the management shall submit a report so stating.

(2) Within 30 days following the conclusion of any horse show, horse exhibition, or horse sale or auction which does *not* include Tennessee Walking Horses, Racking Horses, or related breeds that perform with an accentuated gait that raises concerns about soring, the management of such show, exhibition, sale or auction shall inform the Administrator of any case where a horse was prohibited by management or its representatives from being shown, exhibited, sold or auctioned because it was found to be sore.

§ 11.12 Inspection procedures for HPIs.

(a) *Required inspections.* (1) The HPI shall physically inspect:

(i) All horses that perform with an accentuated gait that raises concerns about soring entered for sale or auction;

(ii) All horses, regardless of breed, entered in any animated gait class (whether under saddle, horse to cart, or otherwise);

(iii) All horses that perform with an accentuated gait that raises concerns about soring entered for exhibition before they are admitted to be shown, exhibited, sold, or auctioned, except as provided in paragraph (a)(2) of this section;

(iv) All horses that perform with an accentuated gait that raises concerns about soring and that are tied first in their class or event; and

(v) Any other horse in a class or event at any horse show or exhibition that, in the view of the HPI, raises concerns about soring. Such inspection shall be for the purpose of determining whether any such horse is sore or the custodian of the horse is otherwise in noncompliance with the Act or the regulations in this part. Such physical inspection shall be conducted in accordance with the inspection procedures provided for in this section.

(2) When a horse is presented for inspection, its custodian shall present the HPI with a record or entry card that includes identifying information about the horse pursuant to § 11.10(a)(5). The HPI shall observe horses warming up and during actual performances whenever possible, and shall inspect any horse in the barn area and show grounds as he or she deems necessary at any time to determine whether the custodian of any such horse shown, exhibited, sold, or auctioned is in noncompliance with the Act or regulations.

(3) Horses that perform with an accentuated gait entered in classes in which the horses will *not* be judged on their gait may not need to be inspected if the management submits a class list[5] to the Administrator for review and the Administrator waives inspection for the class. The waiver must be requested along with the required notification to the Administrator that the event will occur and must be granted prior to judging of the class, or the HPI will inspect the horses.

(4) The HPI shall immediately report, to the management of any horse show, horse exhibition, or horse sale or auction, any horse which, in his or her opinion, is sore or otherwise in alleged violation of the Act or regulations. Such report shall be made before the show class or exhibition involving the horse has begun or before the horse is offered for sale or auction.

(5) Horses dismissed from the show arena, whether by a judge, steward, or custodian of the horse, must be taken directly to the inspection area for follow-up inspection by a HPI or an APHIS representative. Horses that suffer serious illness or injury while performing and determined by an authorized HPI or APHIS representative to require immediate veterinary treatment are not required to return to the inspection area at that time.

(b) *Inspection procedures.* (1) The HPI must ensure that all tack except for a halter and lead rope is removed from the horse during inspection, as required in § 11.5(c).

(2) During the preshow inspection, the HPI shall direct the custodian of the horse to lead, walk, and turn the horse in a figure-eight that allows the HPI to determine whether the horse exhibits a gait deficiency. The HPI shall determine whether the horse moves in a free and easy manner.

(3) The HPI shall digitally palpate the front limbs of the horse from knee to hoof, with particular emphasis on the fetlocks and pasterns. Digital palpation must be of a pressure sufficient to blanch, or whiten, the thumb of the inspecting HPI. The HPI shall inspect the posterior surface of the pastern by picking up the hoof and examining the posterior (flexor) surface. The HPI shall apply digital pressure to the pocket (sulcus), including the bulbs of the heel, and continue the palpation to the medial and lateral surfaces of the pastern, being careful to observe for responses to pain in the horse. While continuing to hold onto the pastern, the HPI shall extend the hoof and limb of the horse to inspect the front (extensor) surfaces, including the coronary band. The HPI may inspect the rear limbs of all horses inspected after showing, and may inspect the rear limbs of any horse inspected preshow or on the showgrounds when he deems it necessary, except that the HPI shall inspect the rear limbs of all horses exhibiting lesions on, or unusual movement of, the rear limbs. While carrying out the procedures set forth in this paragraph, the HPI shall also inspect the horse to determine whether it is compliant with the scar rule in § 11.3, and particularly whether there is any evidence of inflammation, edema, proliferating granuloma tissue, or other evidence of prior abuse.

(4) The HPI shall observe and inspect all horses for compliance with the provisions set forth in § 11.2.

(5) The HPI shall instruct the custodian of the horse to control it by holding the lead rope approximately 18 inches from the halter. The HPI shall not be required to inspect a horse if it is presented in a manner that might cause the horse not to react to a HPI's inspection, or if whips, cigarette smoke, or other actions or paraphernalia are used to distract a horse during inspection. Horses that are not presented in a manner to allow their proper inspection, as well as unruly or fractious horses, will be prohibited from showing. The HPI shall report such incidents to show management and APHIS.

(c) *Inspection logistics.* (1) In shows with 150 horses or more are entered, an authorized HPI may inspect horses 3 classes ahead of the time such horses are to be shown but only if another authorized HPI can provide continuous and uninterrupted supervision of the designated warm-up area for the inspected horses. In shows with fewer than 150 horses are entered, the HPI may inspect horses 2 classes ahead of the time the inspected horses are to be shown.

(2) Inspected horses shall be held in a designated area that is under observation by an authorized HPI or APHIS representative. Horses shall not be permitted to leave the designated warm-up area before showing. Only the custodian, the trainer, the rider, authorized HPIs, and APHIS representatives shall be allowed in the designated area. Guests of management may be permitted in the designated area at the discretion of an authorized HPI or APHIS representative.

(d) *Additional inspection procedures.* The HPI may carry out additional visual, physical, or diagnostic inspection procedures as he or she deems necessary to determine whether the horse is sore or the horse's custodian is otherwise not in compliance with the Act or regulations. The HPI may inspect and remove plastic, cotton, or any materials wrapped around the limbs of any horse at a horse show, exhibition, sale, or auction to determine whether any prohibited foreign substance is present. The HPI may require that horseshoes be removed by a farrier as part of the inspection. The HPI may use hooftesters on all horses.

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[5] See footnote 3, which includes the email address for submitting the list.

§ 11.13 Requirements concerning persons involved in transportation of certain horses.

Each person who ships, transports, or otherwise moves, or delivers or receives for movement, any horse with reason to believe such horse may be shown, exhibited, sold or auctioned at any horse show, horse exhibition, or horse sale or auction, shall allow the inspection of such horse at any such horse show, horse exhibition, horse sale, or horse auction to determine compliance with the Act and regulations and shall furnish to any authorized HPI or APHIS representative upon his or her request the following information:

(a) Name and address (including street address or post office box number, and ZIP Code) of the horse owner and of the shipper, if different from the owner or trainer;

(b) Name and address (including street address or post office box number, and ZIP Code) of the horse trainer;

(c) Name and address (including street address or post office box number, and ZIP Code) of the farrier;

(d) Name and address (including street address or post office box number, and ZIP Code) of the carrier transporting the horse, and of the driver of the means of conveyance used;

(e) Origin of the shipment and date thereof; and

(f) Destination of shipment.

Done in Washington, DC, this 21st day of July 2016.

Elvis S. Cordova,

Deputy Under Secretary for Marketing and Regulatory Programs.

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